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THE

JUSTICE of the PEACE,

AND

PARISH OFFICER.

BY RICHARD BURN, CLERK;

One of His MAJESTY's Juſtices of the Peace for the County of WESTMORLAND.

The Second Edition, with the STATUTES and adjudged CASES continued to the preſent Time.

VOL. II.

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Homicide.

HOMICIDE in law ſignifies the killing of a man by a man. 1 *Haw.* 66.

And it includes in it, not only petit treaſon, concerning which ſee title Treaſon; but alſo the ſeveral offences which are treated of in the following ſections.

There is alſo another kind of untimely death of a man, not properly homicide: when he is killed by a horſe, a cart, a tree, or the like, and not by a man; which is called Caſual death: for which ſee title Deodand.

I. Juſtifiable homicide.
II. Homicide by miſadventure.
III. Homicide by ſelf defence.
IV. Manſlaughter.
V. Murder.
VI. Self murder.

I. Juſtifiable homicide.

1. To make homicide juſtifiable, it muſt be owing to ſome unavoidable neceſſity, to which the perſon who kills another muſt be reduced, without any manner of fault in himſelf. 1 *Haw.* 69. On a real neceſſity.

And there muſt be no malice coloured under pretence of neceſſity; for wherever a perſon who kills another, acts in truth upon malice, and takes occaſion from the appearance of neceſſity to execute his own private revenge, he is guilty of murder. 1 *Haw.* 69.

2. If any evil diſpoſed perſon ſhall attempt feloniouſly to rob or murder any perſon in any dwelling houſe or highway, or feloniouſly attempt to break any dwelling houſe in the night time, and ſhall happen in ſuch felonious intent to be ſlain; the ſlayer ſhall be diſcharged, and ſhall forfeit no lands nor goods. 24 *H.* 8. *c.* 5. Killing robbers and burglars.

3. If treſpaſſers in a foreſt, chaſe, park, or warren, or any incloſed ground wherein deer are kept, will not render themſelves to the keepers, upon a hue and cry made to ſtand to the king's peace, but fly from, or defend themſelves againſt them, they may be ſlain by them. 1 *Haw.* 71. Treſpaſſers in parks.

4. If rioters, or forcible enterers or detainers, ſtand in oppoſition to the juſtices lawful warrant, and any of them is ſlain; it is no felony. *Hale's Pl.* 37. Rioters.

Houſeburners. 5. If a man come to burn my houſe, and I ſhoot out of my houſe, or iſſue out of my houſe, and kill him; it is no felony. *Hale's Pl.* 39.

Raviſhers. 6. If a woman kill him that aſſaulteth to raviſh her; it is no felony. *Hale's Pl.* 39.

Felons refuſing to be arreſted. 7. If a perſon having actually committed a felony, will not ſuffer himſelf to be arreſted, but ſtand on his own defence, or fly, ſo that he cannot poſſibly be apprehended alive by thoſe who purſue him, whether private perſons, or publick officers, with or without a warrant from a magiſtrate; he may be lawfully ſlain by them. 1 *Haw.* 70.

Suſpected felons refuſing to be arreſted. 8. So if a felony hath actually been committed, and an officer or miniſter of juſtice, having lawful warrant ſo to do, arreſt an innocent perſon, and ſuch perſon aſſault the officer or miniſter of juſtice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwiſe avoid it, but in ſtriving kill him, it is no felony. And in that caſe, the officer or miniſter of juſtice ſhall forfeit nothing; but the party ſo aſſaulting, or offering to fly away, and is killed, ſhall forfeit his goods. 3 *Inſt.* 56.

Felon eſcaping. 9. Alſo if a perſon arreſted for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwiſe take him. But in this caſe likewiſe, there muſt have been a felony actually committed. *Hale's Pl.* 36, 37.

Felon breaking gaol. 10. Alſo if a criminal endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71.

Reſiſting a civil proceſs. 11. In civil cauſes; Altho' the ſheriff cannot kill a man, who flies from the execution of a civil proceſs; yet if he reſiſt the arreſt, the ſheriff or his officer need not give back, but may kill the aſſailant. *Hale's Pl.* 37.

So if in the arreſt and ſtriving together, the officer kill him, it is no felony. *Hale's Pl.* 37.

Trial and diſcharge. 12. In all theſe caſes the party upon arraignment having pleaded not guilty, the ſpecial matter muſt be found; whereupon the party ſhall be diſmiſſed, without any forfeiture, or pardon purchaſed. *Hale's Pl.* 38.

II. Homicide by miſadventure.

Chancemedley. 1. I have purpoſely avoided the word *chancemedley* in this place, becauſe authors do not ſeem to be agreed whether it is to be applied to homicide *by miſadventure*, or to *manſlaughter*. Ld. *Coke* and Mr. *Hawkins* ſeem to underſtand it of *manſlaughter*; Ld. *Hale*, and others, of homicide *by miſadventure*. The original meaning of the word ſeems to favour the former opinion, as it ſignifies a ſudden or caſual meddling or contention; whereas homicide *by miſadventure* ſuppoſeth no previous meddling or falling out. But the ſame author ſometimes, in different places, applies it to both of them promiſcuouſly.

2. Homicide by misadventure is, where a man is doing a lawful act, without intent of hurt to another, and death casually ensues. *Hale's Pl.* 31. What is homicide by misadventure.

3. As where a labourer being at work with a hatchet, the head flies off, and kills one who stands by. 1 *Haw.* 73. Cases of homicide by misadventure.

4. Or where a third person whips a horse, on which a man is riding, whereupon he springs out, and runs over a child, and kills him; in which case the rider is guilty of homicide by misadventure, and he who gave the blow of manslaughter. 1 *Haw.* 73.

5. But if a person, riding in the street, whip his horse to put him into speed, and run over a child and kill him, it is homicide and not by misadventure; and if he ride so, in a press of people, with intent to do hurt, and the horse killeth another, it is murder in the rider. 1 *H. H.* 476.

6. If a person drives his cart carelessly, and it runs over a child in the street, if he have seen the child, and yet drives on upon him, it is murder; but if he saw not the child, yet it is manslaughter; but if the child had run cross the way, and the cart ran over the child before it was possible for the carter to make a stop, it is by misadventure. 1 *H. H.* 476.

7. It is said before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. As if a person, meaning to steal a deer, in another man's park, shooteth at the deer, and by the glance of the arrow killeth a boy, that is hidden in a bush; this is murder, for that the act was unlawful, altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony. 3 *Inst.* 56.

8. So if one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is by misadventure; for it was not unlawful to shoot at the wild fowl: But if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a man, this had been murder; for the act was unlawful. 3 *Inst.* 56.

9. Also, if there be an evil intent, it is murder. Thus, if a man, knowing that many people are in the street, throw a stone over a wall, intending only to fright them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, tho' that intent extended not to death, and tho' he knew not the party slain. 3 *Inst.* 57.

10. And it is a general rule, in case of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw.* 74.

11. But in all the cases above, if it doth only hurt a man, by such an accident, it is nevertheless a trespass; and the person hurt shall recover his damages: for tho' the chance excuse from felony, yet it excuseth not from trespass. 1 *H. H.* 472.

12. If a person escape that hath killed another by misadventure, the town shall be amerced. 2 *Inst.* 149. Escape.

This kind of homicide no felony.

13. This homicide is not felony, becauſe it is not accompanied with a felonious intent, which is neceſſary in every felony. 1 *Haw.* 75.

Bail.

14. But yet a perſon guilty thereof is not bailable by juſtices of the peace, but muſt be committed to the aſſizes. 1 *Haw.* 75.

But if he is taken only on a ſlight ſuſpicion, the juſtices of the peace may bail him. 2 *Haw.* 105.

Forfeiture.

15. Altho' this homicide is not properly a man's crime, but his misfortune; yet becauſe the king hath loſt his ſubject, and in reſpect of the great favour the law hath to the life of man, and to the end that men ſhould uſe all care, diligence, and circumſpection in all they do, that no hurt ſhould come of their actions, a perſon convicted hereof ſhall forfeit his goods, and ſhall not preſently be diſcharged of his impriſonment, but bailed, that he may ſue out his pardon, which he ſhall have out of the chancery of courſe. 1 *H. H.* 477, 492. 1 *Haw.* 76.

III. Homicide by ſelf defence.

Se defendendo, what.

1. Homicide in a man's own defence ſeems to be, where one who hath no other poſſible means of preſerving his life from one who combats with him on a ſudden quarrel, kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. 1 *Haw.* 75.

Caſes of ſe defendendo.

2. And not only he, who upon an aſſault retreats to a wall, or ſome ſuch ſtrait, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable neceſſity; but alſo he, who being aſſaulted in ſuch a manner, and in ſuch a place, that he cannot go back without manifeſtly indangering his life, kills the other without retreating at all. 1 *Haw.* 75.

3. And notwithſtanding a perſon who retreats from an aſſault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *ſe defendendo* only. 1 *Haw.* 75.

4 But if the mortal wound was firſt given, then it is manſlaughter. *Hale's Pl.* 42.

5. And an officer who kills one that reſiſts him in the execution of his office, and even a private perſon that kills one who felonioufly aſſaults him in the highway, may juſtify the fact, without ever giving back at all. 1 *Haw.* 75.

6. But if a perſon upon malice *prepenſe* ſtrike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42.

Acceſſaries.

7. Hereof there can be no acceſſaries, either before or after the fact; becauſe it is not done with a felonious intent, but upon inevitable neceſſity. 3 *Inſt.* 56.

Eſcape.

8. If a man eſcape, that hath killed another in his own defence, the town ſhall be amerced. 2 *Inſt.* 315.

Bail.

9. A perſon guilty hereof is not bailable by juſtices of the peace; but they muſt commit him till the aſſizes. 1 *Haw.* 76.

But otherwiſe it is, if he is taken only on ſlight ſuſpicion. 2 *Haw.* 105.

10. Lord

10. Lord *Coke* (2 *Inſt.* 316.) ſays, that the juſtices of the peace cannot take an indictment of killing a man *ſe defendendo*; becauſe their commiſſion is not general, as is that of the juſtices of gaol delivery, but limited: But Lord *Hale* (2 *H. H.* 46.) holds the contrary. Power of juſtices of the peace.

11. A perſon convicted hereof, ſhall not be diſcharged out of priſon but upon bail, and ſhall forfeit all his goods, altho' the cauſe was inevitable. And this, becauſe of the great regard which the law hath for the life of man; and alſo, by reaſon that the law intends it had a beginning upon an unlawful cauſe: for quarrels are not preſumed to grow without ſome wrongs in words or deeds, and ſo malice on both ſides. But he ſhall have his pardon out of the chancery of courſe. 3 *Inſt.* 56. 1 *Haw.* 76. Forfeiture.

12. If a man be indicted for homicide *ſe defendendo*, and is found not guilty, yet if it be found that he fled for the ſame, he ſhall forfeit his goods for ſuch flight, in not ſtanding to the law of the land. 1 *H. H.* 493. Flight.

IV. Manſlaughter.

1. By manſlaughter is to be underſtood ſuch killing of a man, as happens either on a ſudden quarrel, or in the commiſſion of an unlawful act, without any deliberate intention of doing any miſchief at all. 1 *Haw.* 76. Manſlaughter, what.

2. There is no difference between murder and manſlaughter, but that murder is upon malice forethought, and manſlaughter upon a ſudden occaſion. As if two meet together, and ſtriving for the wall, the one kill the other, this is manſlaughter and felony. And ſo it is, if they had upon that ſudden occaſion gone into the field and fought, and the one had killed the other, this had been but manſlaughter, and no murder; becauſe all that followed was but a continuance of the firſt ſudden occaſion. and the blood was never cooled, till the blow was given. 3 *Inſt.* 55. Without malice.

3. There can be no acceſſaries to this offence before the fact, becauſe it muſt be done without premeditation. 1 *Haw.* 76. Acceſſaries.

But there may be acceſſaries after the fact. 3 *Inſt.* 55.

4. This offence is not bailable by juſtices of the peace. 3 *Ed.* 1. *c.* 15. Bail.

5. It is within the benefit of clergy; but the offender ſhall forfeit as in other felonies. 2 *H. H.* 344. Clergy.

6. But there is one kind of manſlaughter, which by the ſtatute of the 1 *J. c.* 8. is excluded the benefit of clergy; *viz.* He who ſhall ſtab or thruſt any perſon that hath not then any weapon drawn, or hath not then ſtricken firſt, ſo as the perſon ſo ſtabbed or thruſt ſhall die thereof in ſix months, altho' it cannot be proved that the ſame was done of malice forethought, ſhall be guilty of felony without benefit of clergy. Stabbing.

V. Murder.

1. Murder is, when a man of ſound memory, and of the age of diſcretion, unlawfully killeth any perſon under the king's peace, Murder, what.

with malice forethought, either expreſſed by the party, or implied by law; ſo as the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 *Inſt.* 47.

Caſes of murder. 2. By *malice expreſſed*, is meant, a deliberate intention of doing any bodily harm to another, whereunto by law a perſon is not authorized. 1 *H. H.* 451.

And the evidences of ſuch a malice muſt ariſe from external circumſtances diſcovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compaſſings, and the like; which are various, according to variety of circumſtances. 1 *H. H.* 451.

3. *Malice implied* is in ſeveral caſes: as when one voluntarily kills another, without any provocation; for in this caſe the law preſumes it to be malicious, and that he is a publick enemy of mankind. 1 *H. H.* 455, 456.

4. Poiſoning alſo implies malice, becauſe it is an act of deliberation. 1 *H. H.* 455.

5. Alſo when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 *H. H.* 457.

6. Alſo where a priſoner dieth by dureſs of the gaoler, the law implies malice, by reaſon of the cruelty. 3 *Inſt.* 52.

7. And in general, any formed deſign of doing miſchief may be called malice, and therefore not ſuch killing only as proceeds from premeditated hatred or revenge againſt the perſon killed, but alſo in many other caſes, ſuch as is accompanied with thoſe circumſtances that ſhew the heart to be preverſely wicked, is adjudged to be of malice *prepenſe*, and conſequently murder. 1 *Haw.* 80. *Strange* 766. *Oneby*'s caſe.

8. And wherever it appears that a man killed another, it ſhall be intended *prima facie* that he did it malicioufly, unleſs he can make out the contrary, by ſhewing that he did it on a ſudden provocation, or the like. 1 *Haw.* 82.

9 Alſo wherever a perſon in cool blood, by way of revenge, beats another in ſuch a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone ſo far. 1 *Haw.* 83.

10. And it ſeems to be agreed, that no breach of a man's word or promiſe, no treſpaſs either to lands or goods, no affront by bare words or geſtures, however falſe or malicious it may be, and aggravated with the moſt provoking circumſtances, will excuſe him from being guilty of murder, who is ſo far tranſported thereby, as immediately to attack the perſon who offends him, in ſuch a manner as manifeſtly endangers his life, without giving him time to put himſelf upon his guard, if he kills him in purſuance of ſuch aſſault, whether the perſon ſlain did at all fight in his defence or not. 1 *Haw.* 82.

11. If a man by harſh and unkind uſage put another into ſuch a paſſion of grief or fear, that the party either die ſuddenly, or contract ſome diſeaſe whereof he dies, tho' this may be murder or manſlaughter in the ſight of god, yet in a human judicature it cannot come under the judgment of felony, becauſe no external

act

act of violence was offered, whereof the law can take notice. 1 *H. H.* 429.

12. If two fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice prepenſed; for the fetching of the weapon, and going into the field, is but a continuance of the ſudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay tho' it were the ſame day, if there were ſuch a competent diſtance of time, that in common preſumption, they had time of deliberation, then it is murder. 3 *Inſt.* 51. 1 *H. H.* 453.

13. And the law ſo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but alſo his ſeconds, are guilty of murder, whether they fought or not. And it is holden, that the ſeconds of the party ſlain are likewiſe guilty as acceſſaries. 1 *Haw.* 82.

14. If a phyſician or ſurgeon gives a perſon a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a diſeaſe, and contrary to the phyſician or ſurgeon's expectation it kills him, this is no homicide. And Lord *Hale* ſays, he holds their opinion to be erroneous, who think that if he be no licenſed ſurgeon or phyſician, that occaſioneth this miſchance, that then it is felony. Theſe opinions (he ſays) may caution ignorant people not to be too buſy in this kind with tampering with phyſick, but are no ſafe rule for a judge or jury to go by. 1 *H. H.* 429.

15. But if a woman be with child, and any gives her a potion to deſtroy the child within her, and ſhe take it, and it works ſo ſtrongly that it kills her, this is murder; for it was not given to cure her of a diſeaſe, but unlawfully to deſtroy the child within her; and therefore he that gives her a potion to this end, muſt take the hazard, and if it kills the mother it is murder. 1 *H. H.* 430.

16. Alſo if a woman be quick with child, and by a potion or otherwiſe, killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and ſhe is delivered of a dead child, this is a great miſpriſion, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cauſe, this is murder. 3 *Inſt.* 50.

Lord *Hale* ſays, that in this caſe it cannot legally be known, whether the child were killed or not; and that if the child die, after it is born and baptized, of the ſtroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. *Dalton* ſays, whether it die within her body, or ſhortly after her delivery, it maketh no difference. *Dalt.* 332. But Mr. *Hawkins* ſays, that (in this latter caſe) it ſeems clearly to be murder, notwithſtanding ſome opinions to the contrary. 1 *Haw.* 80.

17. Alſo it ſeems agreed, that where one counſels a woman to kill her child when it ſhall be born, who afterwards doth kill it in purſuance of ſuch advice, he is an acceſſary to the murder. 1 *Haw.* 80.

18. By

18. By the 21 *J.* *c.* 27. If a woman be delivered of a baſtard child, and ſhe endeavour privately, either by drowning or ſecret burying thereof, or any other way, either by herſelf, or the procuring of others, ſo to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; ſhe ſhall ſuffer death as in caſe of murder, except ſhe can prove by one witneſs that it was born dead.

19. Lord *Hale* ſays, if a man have a beaſt, as a bull, cow, horſe, or dog, uſed to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it:

If he have no particular notice that it did any ſuch thing before, yet if it is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape or a monkey, if it get looſe and do harm to any perſon, the owner is liable to an action for the damage:

If he have notice of the quality of any ſuch his beaſt, and uſe all due diligence to keep him up, yet he breaks looſe and kills a man, this is no felony in the owner, but the beaſt is a deodand:

But if he did not uſe that due diligence, but thro' negligence the beaſt goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manſlaughter in the owner:

But if he did purpoſely let him looſe or wander abroad, with deſign to do miſchief, nay tho' it were with deſign only to fright people and make ſport, and it kills a man, it is murder in the owner. 1 *H. H.* 431.

Perſons preſent when murder is committed.

20. They that are preſent when any man is ſlain, and do not their beſt endeavour to apprehend the murderer or manſlayer, ſhall be fined and impriſoned. 3 *Inſt.* 53.

Eſcape.

21. If a murder be committed in the day time, in a town not incloſed, and the murderer eſcape, the townſhip ſhall be amerced: but if incloſed, whether the murder be in the night or day, the town ſhall be amerced. 3 *Inſt.* 53.

Where the ſtroke is in one county, and the death in another.

22. Where any perſon ſhall be felonioufly ſtricken or poiſoned in one county, and die in another county; the offender may be indicted in the county where the party dies, before the coroner, juſtices of the peace, or other juſtices. 2 & 3 *Ed.* 6. *c.* 24. *f.* 2.

Where the principal committeth the offence in one county, and the acceſſary in another.

23. Where a murder is committed in one county, and a perſon is acceſſary in another county, he may be indicted in the county where he was acceſſary, on certificate of the conviction of the principal in the county where he committed the murder. 2 & 3 *Ed.* 6. *c.* 24.

Where the ſtroke is in England, and the death out of England; and vice verſa.

24. If any perſon be felonioufly ſtricken or poiſoned upon the ſea, or out of *England*, and ſhall die of the ſame in *England*; or ſhall be felonioufly ſtricken or poiſoned in *England*, and ſhall die of the ſame on the ſea, or out of *England*; the offenders and acceſſaries may be indicted in the county where any ſuch death, ſtroke, or poiſoning ſhall happen, before the coroner, juſtices of the peace, or other juſtices; and the judges of aſſize, or any ſuperior court, to which the indictment ſhall be removed, ſhall proceed thereon accordingly. 2 *G.* 2. *c.* 21.

25. If any man be ſlain or murdered, and the ſlayers, murderers, and acceſſaries be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they ſhall not be ſuffered to go at large, but be committed or bailed, till the year and day be paſt; and an appeal may be brought, notwithſtanding ſuch acquittal on indictment, if he hath not had his clergy. 3 *H.* 7. *c.* 1. Trial, when.

26. Sentence, in caſe of murder, ſhall be pronounced in open court immediately after conviction, unleſs the court ſhall ſee reaſonable cauſe for poſtponing the ſame; in which ſhall be expreſſed not only the uſual judgment of death, but alſo the time appointed for execution, and the marks of infamy directed for ſuch offenders. 25 *G.* 2. *c.* 37. *ſ.* 3. Judgment.

27. And after conviction and judgment, the gaoler ſhall confine the priſoner to ſome cell, or other proper and ſafe place in the priſon, apart from the other priſoners; and no perſon, except the gaoler, or his ſervants, ſhall have acceſs to him, without a licence from the judge, ſheriff, or under ſheriff. But if the judge ſhall ſee cauſe to reſpite the execution, he may during the time of ſuch ſtay, relax, or releaſe, by licence under his hand, any or all of the reſtraints or regulations before directed to be obſerved by the gaoler. 25 *G.* 2. *c.* 37. *ſ.* 6, 7. How to be demeaned after judgment.

And after ſentence, and until execution, the offender ſhall be fed with bread and water only (except in caſe of receiving the ſacrament; or of any violent ſickneſs or wound, in which caſe ſome known phyſician, ſurgeon, or apothecary may be admitted by the gaoler to adminiſter neceſſaries, his name and place of abode being firſt entred in the books of ſuch priſon.) And if the gaoler ſhall offend againſt, or neglect to put in execution, any of the ſaid directions; he ſhall forfeit his office, and be fined 20 *l.* and impriſoned till paid. *id. ſ.* 8.

28. The execution of perſons found guilty of wilful murder, ſhall be on the day next but one after ſentence paſſed, unleſs it be *Sunday*, and in that caſe on the *Monday* following. 25 *G.* 2. *c.* 37. *ſ.* 1. Execution.

But if there ſhall appear reaſonable cauſe, the judge after ſentence pronounced, may ſtay the execution at his diſcretion. *id. ſ.* 4.

29. And if any perſon ſhall by force ſet at liberty or reſcue, or attempt to ſet at liberty, or reſcue, any perſon out of priſon, committed for, or found guilty of murder; or reſcue, or attempt to reſcue any ſuch perſon going to, or during execution; he ſhall be guilty of felony without benefit of clergy. 25 *G.* 2. *c.* 37. *ſ.* 9. Reſcue.

30. The body, if in *London* or *Middleſex*, ſhall be immediately conveyed by the ſheriff, to the ſurgeons hall, or ſuch other place as the ſurgeons company ſhall appoint, to be by them diſſected and anatomized; and if elſewhere, ſhall be delivered to ſuch ſurgeon as the judge ſhall direct, for the purpoſe aforeſaid. 25 *G.* 2. *c.* 37. *ſ.* 2. Body not to be buried.

And the judge may direct the body to be hung in chains, or anatomized; but in no caſe whatſoever to be buried, unleſs after the ſame ſhall have been diſſected and anatomized. *ſ.* 5.

31. And

Rescuing the body.

31. And if after execution, any person shall by force rescue, or attempt to rescue the body; he shall be guilty of felony, and transported for seven years. 25 *G.* 2. *c.* 37. *s.* 10.

How far the accessary shall have his clergy.

32. The principal in murder is ousted of clergy in all cases, and the accessary before is also ousted of clergy in all cases, but the accessary after is in no case ousted of clergy. 2 *H. H.* 344.

Pardon.

33. All voluntary murders, wilful poisonings, and all slaughters of forethought felony, are excepted out of the general pardon of the 20 *G.* 2. *c.* 52.

Navy.

34. All murders committed by any person in the fleet, shall be punished with death, by the sentence of a court martial. 22 *G.* 2. *c.* 33. *art.* 28.

VI. Selfmurder.

Felo de se.

1. A *felo de se*, or felon of himself, is a person, who being of sound mind, and of the age of discretion, voluntarily killeth himself. 3 *Inst.* 54. 1 *H. H.* 411.

Year and day.

2. If a man give himself a wound, intending to be *felo de se*, and dieth not within the year and day after the wound, he is not *felo de se*. 3 *Inst.* 54.

Non compos.

3. Mr. *Hawkins* speaks with some warmth against an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himself must be *non compos* of course; because it is said to be impossible, that a man in his senses should do a thing so contrary to nature, and all sense and reason. But he argues, that if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as for instance that of a mother murdering her child, which is also against nature and reason: and this consideration, instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person *non compos mentis* can be guilty of no crime. 1 *Haw.* 67.

And Lord *Hale* says, it is not every melancholy or hypochondriacal distemper, that denominates a man *non compos*, for there are few who commit this offence, but are under such infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantick, or destitute of the use of reason, which will denominate him *non compos*. 1 *H. H.* 412.

Forfeiture.

4. The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land, without an attainder by course of law. 3 *Inst.* 54.

Nor shall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the justices in sessions may inquire thereof; for they have power by their commission to inquire of all felonies: and a presentment thereof found before them, intitles the king to the forfeiture. 3 *Inst.* 54, 55. *Dalt. c.* 144.

But nevertheless, the forfeiture shall relate to the time of the wound given, and not to the time of the death, or of the inquisition. 3 *Inst.* 55. *Dalt. c.* 144. 1 *Hale's Pl.* 29. 1 *Haw.* 68.

But

But Lord *Hale*, in his hiſtory of the pleas of the crown, ſeemeth to doubt, whether it ſhall not relate to the time of the death only, and not to the time of the wound given. 1 *H. H.* 414.

5. Nor doth the offence work any corruption of blood, or loſs of dower. 1 *Haw.* 68. Corruption of blood.

6. By the rubrick in the common prayer, before the burial office (confirmed by act of parliament, 13 & 14 *C.* 2. *c.* 4.) perſons who have laid violent hands upon themſelves, ſhall not have that office uſed at their interment. Burial.

Hops. See Exciſe.

Horſes.

Stealing of horſes belongs to title Larceny.

I. Buying of ſtolen horſes.
II. Killing or maiming horſes in the night.
III. Putting ſtoned horſes on commons.
IV. Putting ſcabbed horſes on commons.

I. Buying of ſtolen horſes.

BY the 2 & 3 *P. & M. c.* 7. and 31 *El. c.* 12. It is enacted as follows:

1. The keeper of every fair and market ſhall yearly appoint a certain ſpecial and open place, where horſes ſhall be ſold in any fair or market overt. Horſe fair.

2. And ſhall appoint one or more perſons to take toll there, and to keep the ſame place from ten in the forenoon till ſun-ſet. Toll taker.

3. And the ſale or exchange in any fair or market overt, of any ſtolen horſe, ſhall not alter the property, unleſs the ſame ſhall be, in the time of the ſaid fair or market, openly ridden, led, walked, driven, or kept ſtanding, for one hour together at leaſt, between ten of the clock and ſun ſet, in the open place of the fair or market, wherein horſes are commonly uſed to be ſold, and not within any houſe, yard, backſide, or other privy or ſecret place. Horſe to be ſhewed one hour.

4. Nor unleſs all the parties to the bargain ſhall come together, and bring the horſe to the open place appointed for the toll taker, or for the book keeper where no toll is due. Seller and buyer to go to the toll taker.

5. Nor unleſs ſuch toll taker there, or (where no toll is paid) the book keeper or chief officer of the fair or market, ſhall take upon him perfect knowledge of the ſeller, and of his true chriſtian name and ſurname and place of abode, and ſhall enter all the ſame Sale to be entred.

ſame his knowledge in a book to be kept for that purpoſe; or elſe that the ſeller ſhall bring to the toll taker, or other officer aforeſaid, one credible perſon, that ſhall teſtify that he knoweth the ſeller, and his true name, ſurname, miſtery, and dwelling place, and there enter the ſame, and alſo the name, ſurname, miſtery, and dwelling place of him that ſo avoucheth his knowledge.

And the price. 6. Nor unleſs he alſo cauſe to be entered, the very true price.

And marks. 7. And alſo the colour, and one ſpecial mark at leaſt.

Toll to be paid. 8. And alſo the buyer to pay the toll, if any is due; if not, then to give 1 *d.* for the entry.

Certificate of entry. 9. Which done, the perſon entring the ſame ſhall give to the buyer requiring and paying 2 *d.* for the ſame, a note in writing of all the contents of ſuch entry ſubſcribed with his hand.

Penalties. 10. Every perſon offending in any of the premiſſes ſhall forfeit 5 *l.* half to the king, and half to him that ſhall ſue before the juſtices in ſeſſions, or in any ordinary court of record; and the ſale ſhall be void: and the owner may ſeize and take his horſe again, or have an action of detinue or replevin for the ſame.

Caſe where the horſe ſhall have been duly entred. 11. And if any horſe ſhall be ſtolen, and after ſhall be ſold in open fair or market, and the ſale ſhall be uſed in all points as aforeſaid, yet nevertheleſs ſuch ſale in ſix months after the felony done, ſhall not take away the owner's property, ſo as claim be made in ſix months, where the horſe ſhall be found, before the mayor, if in a town corporate, or elſe before a juſtice near the place where found, and ſo as proof be made before ſuch magiſtrate in 40 days next enſuing by two witneſſes, that the property of ſuch horſe was in the party claiming, and was ſtolen from him within ſix months next before ſuch claim; but the party from whom the ſame was ſtolen, may at all times after, notwithſtanding ſuch ſale, take again the ſaid horſe, on payment, or readineſs to offer to the party who hath poſſeſſion, ſo much as he ſhall ſwear before ſuch magiſtrate, that he paid for the ſame.

II. Killing or maiming horſes in the night.

Killing. 1. By the 22 & 23 *C.* 2. *c.* 7. Where any perſon ſhall in the night time maliciouſly kill or deſtroy any horſes; he ſhall be guilty of felony, and may be tranſported, by three juſtices in ſeſſions, for ſeven years.

Maiming. 2. And if any perſon ſhall in the night time maliciouſly wound or hurt any horſes; he ſhall forfeit to the party grieved treble damages, on the like conviction.

III. Putting ſtoned horſes on commons.

Size. 1. No perſon ſhall put in any foreſt, chaſe, moor, heath, common, or waſte (where mares or fillies are uſed to be kept) any ſtoned horſe above the age of two years, not being 15 hands high, within the ſhires and territories of *Norfolk*, *Suffolk*, *Cambridge*, *Buckingham*, *Huntingdon*, *Eſſex*, *Kent*, *South-Hampſhire*, *North-Wiltſhire*, *Oxford*, *Berkſhire*, *Worceſter*, *Gloceſter*, *Somerſet*, *North Wales*, *South Wales*, *Bedford*, *Warwick*, *Northampton*, *Yorkſhire*, *Cheſhire*,

Cheſhire, *Staffordſhire*, *Lancaſhire*, *Salop*, *Leiceſter*, *Hereford*, and *Lincoln*; nor under 14 hands in any other county (except *Cornwall*, 21 *J.* *c.* 28. *ſ.* 12.); on pain of forfeiting the ſame. 32 *H.* 8. *c.* 13. *ſ.* 2, 10.

But this ſhall not extend to the *marſhes* in the counties of *Cambridge*, *Huntington*, *Suffolk*, *Northampton*, *Lincoln*, and *Norfolk*; provided that the horſes be of 13 hands. 8 *El.* *c.* 8. *ſ.* 3.

Alſo nothing herein ſhall extend to any ſtoned horſe, that ſhall happen once in a year to break out of any paſture into ſuch common, ſo that he do not ſtay there above four days after notice given at the dwelling houſe of the owner, or after publication thereof on a *Sunday* or other feſtival, in the pariſh church where the owner or poſſeſſor of ſuch horſe dwelleth. 32 *H.* 8. *c.* 13. *ſ.* 5.

2. And any perſon may ſeize any ſuch horſe ſo being under ſize, in manner following: He ſhall go to the keeper of ſuch foreſt, or (out of ſuch foreſt) to the conſtable of the next town; and require him to go with him, to bring ſuch horſe to the next pound; and there to be meaſured by ſuch officer, in the preſence of three other honeſt men to be appointed by the officer; and if he ſhall be found contrary to what is above expreſſed, ſuch perſon may take him for his own uſe. 32 *H.* 8. *c.* 13. *ſ.* 3. Seizing the ſame.

And if ſuch keeper, or conſtable, or other of the three perſons ſhall refuſe to do as is aforeſaid; he ſhall forfeit 40*s.* *ſ.* 4.

3. And all ſuch commons and other places ſhall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or conſtables reſpectively, on pain of 40*s.* and they may alſo drive the ſame at any other time when they ſhall think meet. 32 *H.* 8. *c.* 13. *ſ.* 6. Driving the common.

And if in any of the ſaid drifts, there ſhall be found any mare, filly, fole, or gelding, that ſhall then be thought not able, nor like to grow to be able to bear foles of reaſonable ſtature, or to do profitable labours, by the diſcretion of the drivers, or of the more number of them; they may kill and bury them. *ſ.* 7.

4. All which ſaid forfeitures ſhall be half to the king, and half to him that ſhall ſue: and the juſtices in ſeſſions, and ſtewards of leets, may inquire thereof; and the ſteward ſhall certify his preſentments to the next ſeſſions. 32 *H.* 8. *c.* 13. *ſ.* 8. Penalties.

IV. Putting ſcabbed horſes on commons.

No perſon ſhall have, or put to paſture, any horſe, gelding, or mare, infected with ſcab or mange, in any common or common fields; on pain of 10*s.* which offence ſhall be inquirable in the leet, as other common annoyances be, and the forfeiture ſhall be to the lord of the leet. 32 *H.* 8. *c.* 13. *ſ.* 9. Scabbed.

Houſes (duty on). See Windows.
Houſebreaking. See Burglary and Larceny.

House of correction.

Building or repairing houses of correction.

1. BY the 7 *J.* *c.* 4. It was enacted, that before *Michaelmas* 1611. there should be built or provided within every county, one or more fit and convenient houses of correction, with convenient backside thereunto adjoining, together with mills, turns, cards, and such like necessary implements, to set rogues, vagabonds, or other idle, vagrant, and disorderly persons on work; which houses were to be purchased, conveyed, or assured unto such persons as by the justices in sessions should be directed, upon trust, that the same should be employed for the keeping, correcting, and setting to work the said rogues, vagabonds, or sturdy beggars, and other idle and disorderly persons. *s.* 2.

And by the 17 *G.* 2. *c.* 5. On presentment of the grand jury, at the assizes, great session, or general gaol delivery, held for any county or liberty (or at the general sessions, or general quarter sessions of the peace, where there shall be no assizes, great session, or general gaol delivery held, 14 *G.* 2 *c.* 33. *s.* 2.) that there is no house of correction, and that it will be necessary to provide one or more; or that the houses of correction already provided are not sufficient or convenient, or want to be enlarged; the justices in sessions shall have power to build or enlarge one or more fit houses of correction, or to buy or hire houses for that purpose, with convenient backsides or outlets thereto adjoining, or to purchase land, and to erect such house or houses upon part thereof, and to lay out the rest of such land for such backsides or outlets: and to conclude and agree upon raising such sums of money, as on examination of able and sufficient workmen, or others, shall appear to be necessary for that purpose: And if houses or lands are to be purchased, they shall be conveyed to such persons as the said justices in sessions shall direct, in trust and for the uses and purposes aforesaid. *s.* 30.

Appointing the master.

2. And the justices in sessions shall appoint at their will and pleasure, fit persons to be governors or masters of such houses so to be provided. 7 *J.* *c.* 4. *s.* 4. 17 *G.* 2. *c.* 5. *s.* 32.

His salary.

3. And for the said master or governor's travel and care to be had in the said service, and for the relieving of such as shall be weak and sick in his custody, the justices in sessions shall appoint such sums yearly as they shall think meet, to be paid quarterly beforehand by the treasurer (the said master or governor giving sufficient security for the continuance and performance of the said service.) 7 *J.* *c.* 4. *s.* 6. 17 *G.* 2. *c.* 5. *s.* 33.

Which sums shall be paid out of the general county rate, by the 12 *G.* 2. *c.* 29.

Fitting up the house.

4. And the justices in sessions shall take care, that the houses of correction (except those erected or maintained by particular founders) shall be duly fitted up and supplied with implements, materials, and furniture, for keeping, relieving, employing, and correcting, all idle and disorderly persons, rogues, vagabonds, incorrigible

incorrigible rogues, and others, who shall be sent to, confined, or continued in the same; and shall make such orders and regulations as they shall think fit, for the better governing and regulating the said houses, and for employing, relieving, and punishing the persons therein, or for sending them to or from thence; which orders shall not be removed by any *certiorari*. 17 *G.* 2. *c.* 5. *s.* 31.

Commitment thither.

5. And whereas doubts may arise, where authority is given to any justice or justices, to commit offenders to the house of correction, for offences cognizable before them out of sessions, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly limited; it is enacted, that where any offenders shall be committed as aforesaid, by virtue of any law in being or to be made, and the time and manner of their punishment is not expressly limited, the said justice or justices shall commit such offenders to the house of correction, there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law: And two justices (of which the justice who committed him to be one) may discharge the said offender before the sessions, if they see cause; and if he shall not be so discharged, the said sessions may either discharge him, or continue him further not exceeding three months. 17 *G.* 2. *c.* 5. *s.* 32.

And where any person liable by law to be committed to the house of correction, shall be apprehended within any liberty, city, or town corporate, whose inhabitants are contributory to the house of correction of the county, the justices of such liberty may commit such person to the house of correction for the county. 15 *G.* 2. *c.* 24.

The master's duty.

6. The said master or governor shall have power to set such rogues, vagabonds, idle and disorderly persons, as shall be brought or sent to the said house, to work and labour (being able), for such time as they shall continue therein, and to punish them by putting fetters or gives upon them, and by moderate whipping: And the said rogues, vagabonds, and idle persons, during such time as they shall continue in the said house of correction, shall in no sort be chargeable to the country for any allowance, either at their bringing in, or going forth, or during their abode there, but shall have such and so much allowance as they shall deserve by their own labour and work. 7 *J.* *c.* 4. *s.* 4.

And if the master shall not, at every quarter sessions, yield a true account of all such persons as have been committed to his custody: or if any person committed to his custody, shall be troublesome to the country, by going abroad; or otherwise shall escape away from the house of correction, before he shall be from thence lawfully delivered; then the said justices shall set down such fines and penalties upon the said master or governor, as they shall think fit; and all fines and penalties shall be paid to the treasurer, and accounted for by him. 7 *J.* *c.* 4. *s.* 9.

And two justices within the respective hundreds, divisions, or jurisdictions, where there shall be any house of correction, or any two justices appointed by the sessions, shall visit the same twice a

year, or oftner if need be, and report the ſtate thereof to the next ſeſſions. And if the governors thereof ſhall not ſet or keep the ſaid idle and diſorderly perſons, rogues, vagabonds, and incorrigible rogues, to hard labour, and puniſh and correct them according to the directions of their warrants of commitment, or ſhall otherwiſe miſbehave themſelves, the ſaid juſtices in ſeſſions ſhall fine them, as by the 7 *J.* *c.* 4. the fines to be paid to the treaſurer, and accounted for by him as part of the county ſtock. 17 *G.* 2. *c.* 5. *ſ.* 31.

Removing the maſter.

7. The juſtices in ſeſſions may remove the ſaid governor or maſter; and if any perſon removed by order of ſeſſions, ſhall refuſe or neglect to quit poſſeſſion, for ten days after notice given him in writing by the clerk of the peace, any two juſtices (on producing to them ſuch order of ſeſſions, or an atteſted copy thereof, and on oath of one witneſs of ſuch notice having been given, and of his having refuſed or neglected to quit poſſeſſion) may by their warrant direct the ſheriff to remove him, who ſhall thereupon clear the poſſeſſion as in caſe of a writ of *habere facias poſſeſſionem.* 17 *G.* 2. *c.* 5. *ſ.* 31.

Spirituous liquors not to be drank therein.

8. By the 24 *G.* 2. *c.* 40. No ſpirituous liquors ſhall be ſold or uſed in any houſe of correction; as may be ſeen more at large, under the article relating to ſpirituous liquors, in the title Exciſe.

Expences of the whole.

9. And to defray the expences of erecting, purchaſing, hiring, enlarging, altering, and repairing houſes of correction, and of purchaſing land to erect them upon, and for backſides and outlets, and of fitting up and furniſhing ſuch houſes, and of ſending perſons to and from the ſame, and employing them there, the juſtices in ſeſſions may cauſe ſuch ſums as ſhall be neceſſary, to be raiſed in the ſame manner as rates are to be raiſed by the 12 *G.* 2. *c.* 29. 17 *G.* 2. *c.* 5. *ſ.* 33.

Hue and cry.

Meaning of the words.

1. LORD *Coke* ſaith, that hue and cry (called in ancient records *hutefium & clamor*) do mean the ſame thing; for that *huer* in *French* is to hoot or ſhout, in *Engliſh* to cry. 2 *Inſt.* 173. 3 *Inſt.* 116.

But ſince it appeareth by the old books (of which alſo Lord *Coke* maketh obſervation, 2 *Inſt.* 173.) that hue and cry was anciently both by horn and by voice, it may ſeem that theſe two words are not ſynonymous, but that this *hutefium* or *hooting* is by the *horn*, and *crying* by the *voice*; with which alſo accordeth the *French* word *huchet*, which ſignifieth a huntſman's horn: So that hue and cry in this ſenſe will properly ſignify a purſuit by horn and by voice. Which kind of purſuit of robbers by blowing a horn, and by making an outcry is ſaid to be practiſed alſo in *Scotland.*

2. Hue

2. Hue and cry is the old common law proceſs after felons, and ſuch as have dangerouſly wounded any perſon: And this hath received great countenance and authority by ſeveral acts of parliament. 2 *H. H.* 98. Hue and cry, what.

3. To prevent felonies; In walled towns the gates ſhall be ſhut from ſun-ſetting to ſun riſing: and none ſhall lodge without the town, from nine of the clock till day, unleſs his hoſt will anſwer for him. In other towns, watches ſhall be kept: and if a watchman arreſt a night walker, and he diſobey and fly, the watchman may make hue and cry. 13 *Ed.* 1. *ſt.* 2. *c.* 4. Watches to be kept.

4. When any felony is committed, or any perſon is grievouſly and dangerouſly wounded, or any perſon aſſaulted and offered to be robbed, either in the day or night; the party grieved, or any other, may reſort to the conſtable of the vill; and, 1. Give him ſuch reaſonable aſſurance thereof, as the nature of the caſe will bear. 2. If he knows the name of him that did it, he muſt tell the conſtable the ſame. 3. If he know it not, but can deſcribe him, he muſt deſcribe his perſon, or his habit, or his horſe, or ſuch circumſtances as he knows, which may conduce to his diſcovery. 4. If the thing be done in the night, ſo that he knows none of theſe circumſtances, he muſt mention the number of the perſons, or the way they took. 5. If none of all theſe can be diſcovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the conſtable with the fact, and deſire him to ſearch in his town for ſuſpected perſons, and to make hue and cry after ſuch as may be probably ſuſpected, as being perſons vagrant in the ſame night; for many circumſtances may *ex poſt facto* be uſeful for diſcovering a malefactor, which cannot be at firſt found. 2 *H. H.* 100, 101. 3 *Inſt.* 116. Application to the conſtable.

5. For levying hue and cry, altho' it is a good courſe to have the warrant (A) of a juſtice of the peace, when time will permit, in order to prevent cauſeleſs hue and cry; yet by the frame of the ſtatutes it is by no means neceſſary, nor is it always convenient; for the felon may eſcape before the warrant be obtained: and hue and cry was part of the law, before juſtices of the peace were firſt inſtituted. 2 *H. H.* 99. Juſtice's warrant.

6. And the duty of the conſtable is, to raiſe the power of the town, as well in the night as in the day, for the proſecution of the offender. 3 *Inſt.* 116. Conſtable to raiſe the town.

7. And upon hue and cry levied againſt any perſon, or where any hue and cry comes to a conſtable, whether the perſon be certain or uncertain, the conſtable may ſearch ſuſpected places within his vill, for the apprehending of the felons. 2 *H. H.* 103. And to ſearch.

8. But tho' he may ſearch ſuſpected places or houſes, yet his entry muſt be by the doors being open; for he cannot break open doors barely to ſearch, unleſs the perſon againſt whom the hue and cry is levied be there, and then it is true he may; therefore in caſe of ſuch a ſearch, the breaking open the door is at his peril, namely, juſtifiable, if he be there; not juſtifiable, if he be not there: But it muſt be always remembred, that in Breaking doors to ſearch.

case of breaking open a door, there must first a notice given to them within of his business, and a demand of entrance, and a refusal, before the doors can be broken. 2 *H. H.* 103. 2 *Haw.* 86.

Notice to the next constable.

9 If the person, against whom the hue and cry is raised, be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea side. And this was the law before the conquest. 3 *Inst.* 116.

And to the next.

10. And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought to send to every other town round about him, and not to one next town only. And in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof, as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be. *Dalt c.* 54.

What shall be done where the person cannot be described.

11 But if the hue and cry be upon a robbery, burglary, manslaughter, or other felony committed, but the person that did the fact is neither known nor describable by person. Names, or the like, yet such a hue and cry is good, as hath been said, and must be pursued, though no person certain be named or described. 2 *H. H.* 103.

And therefore in this case, all that can be done is, for those that pursue the hue and cry, to take such persons as they have probable cause to suspect; as for instance, such persons as are vagrants, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they had been, and the like. *id.*

All persons shall follow the hue and cry.

12. By the statute of the 3 *Ed.* 1. *c.* 9. All shall be ready, and apparelled, at the commandment and summons of sheriffs (or constables, 2 *Inst.* 171.) and at the cry of the country, to sue and arrest felons; on pain of a grievous fine. And if default be found in the lord of the franchise, the king shall take the franchise to himself; and if in the sheriff or other officer, they shall have one year's imprisonment, and shall make a grievous fine.

And by the statute of the 13 *Ed.* 1. *st.* 2. *c.* 1. It is likewise enacted, that immediately upon robberies and felonies committed, fresh suit shall be made, from town to town, and from county to county.

And no hue and cry shall be lawful, except it be by horsemen and footmen. 27 *El. c.* 13. *s.* 10.

And the life of hue and cry is fresh suit. 3 *Inst.* 117.

Breaking doors to arrest upon pursuit.

13. If the person pursued by hue and cry be in a house, and the doors are shut, and refused to be opened on demand of the constable, and notification of his business, he may break open the doors; and this he may do in any case, where he may arrest, though it be only a suspicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the case: and the same law, is upon a dangerous wound given, and a hue and cry levied upon the offender. 2 *H. H.* 102.

14. And

14. And it ſeems in this caſe, that if he cannot be otherwiſe taken, he may be killed; and the neceſſity excuſeth the conſtable. 2 *H. H.* 102. Killing in the purſuit.

15. If hue and cry be raiſed againſt a perſon certain for felony, tho' poſſibly he is innocent; yet the conſtables, and thoſe that follow the hue and cry, may arreſt and impriſon him in the common gaol, or carry him to a juſtice of the peace, to be examined where he was at the time of the felony committed, and the like. 2 *H. H.* 102. Arreſting an innocent perſon.

16. If the hue and cry be not againſt a perſon certain, but by deſcription of his ſtature, perſon, clothes, horſe, and the like; yet the hue and cry doth juſtify the conſtable, or other perſon following it, in apprehending the perſon ſo deſcribed, whether innocent or guilty: for that is his warrant; it is a kind of proceſs that the law allows of, not uſual in other caſes, namely, to arreſt a perſon by deſcription. 2 *H. H.* 103. Arreſting a perſon by deſcription.

17. In caſe of hue and cry once raiſed and levied, on ſuppoſal of a felony committed, tho' in truth there was no felony committed, yet thoſe that purſue hue and cry, may arreſt and proceed, as if ſo be a felony had been really committed. Caſe of arreſting upon hue and cry levied without cauſe.

And therefore the juſtification of an impriſonment by a perſon upon ſuſpicion, and by a perſon (eſpecially a conſtable) upon hue and cry levied, do extremely differ; for in the former caſe, there muſt be a felony averred to be done, and it is iſſuable; but in the latter, to wit, upon hue and cry, it need not be averred, but the hue and cry levied upon information of a felony is ſufficient, tho' perchance the information were falſe.

And the reaſons hereof are theſe; 1. Becauſe the conſtable cannot examine the truth or falſhood of the ſuggeſtion of him that firſt levied it, for he cannot adminiſter to him an oath; and if he ſhould forbear his purſuit of the hue and cry till it be examined by a juſtice of the peace, the felon might eſcape, and the purſuit would be loſt and fruitleſs. 2. Becauſe the conſtable is by the ſeveral acts of parliament compellable to purſue hue and cry; and he is puniſhable, and ſo are thoſe of the vill, if they do it not. 3. Becauſe he that firſt raiſeth a hue and cry, where no felony is committed, that is, he who giveth the falſe information, is ſeverely puniſhable by fine and impriſonment, if the information be falſe.

And therefore if he raiſe hue and cry upon a perſon that is innocent, yet they that purſue the hue and cry may juſtify the impriſonment of that innocent perſon; and the raiſer is puniſhable: and by the ſame reaſon, if he give notice of a felony committed, when there was in truth none.

And here the juſtification of the impriſonment is mixed, partly upon the hue and cry, and partly upon their own ſuſpicion; and therefore, 1. In reſpect that it is upon hue and cry, there needs no averment, that the felony was done, if the arreſt be by that conſtable that firſt received the information, and ſo raiſed the hue and cry; or if the arreſt were made by that conſtable, or thoſe vills, to whom the hue and cry came at the ſecond hand, it muſt be averred, that ſuch a hue and cry came to them, purporting

ſuch a felony to be done. 2. But alſo inaſmuch as the hue and cry neither names nor deſcribes the perſon of the felon, but only the felony committed, and therefore the arreſt of this or that particular perſon is left to the ſuſpicion and diſcretion of the conſtable, or of the people of the ſecond or third vill, he that arreſts any perſon upon ſuch general hue and cry, muſt aver that he ſuſpected, and ſhew a reaſonable cauſe of ſuſpicion.

But now by the ſtatute of 7 *J. c.* 5. the conſtable, or any that come to his aſſiſtance, even in this caſe of hue and cry, may plead the general iſſue, and give the whole matter of the juſtification in evidence; for the purſuit of hue and cry, tho' performed by others as well as the conſtable, is principally the act of the conſtable of the vill, and the others are but as his deputies or aſſiſtants, within the precincts of their conſtablewick. 2 *H. H.* 101, 2, 3, 4.

Perſons taken on hue and cry, how far bailable.

18. It ſeems that they who are taken upon freſh hue and cry, are not bailable, as being to be accounted amongſt thoſe perſons, who are under a violent preſumption of guilt. 2 *Haw.* 98.

High conſtables to preſent thoſe who purſue not hue and cry.

19. By the 13 *Ed.* 1. *ſt.* 2. *c.* 6. Conſtables of hundreds ſhall be choſen, who ſhall preſent before juſtices aſſigned, defaults of the ſuits of towns, and all ſuch as lodge ſtrangers in uplandiſh towns, for whom they will not anſwer.

Puniſhment of thoſe who follow not hue and cry.

20. And they which levy not hue and cry, or purſue not upon hue and cry, may be indicted, fined, and impriſoned. 3 *Inſt.* 117.

Power of the leet to inquire thereof.

21. And it is an article of the leet, to inquire of hues and cries levied and not purſued. 18 *Ed.* 2.

A. Warrant to levy hue and cry on a robbery having been committed.

Weſtmorland. { To all conſtables and other officers, as well in the ſaid county of *Weſtmorland*, as elſewhere, to whom the execution hereof doth or ſhall belong.

WHEREAS A. I. *of* ——— *in the county of* ——— *yeoman, hath this day made information upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *that on this preſent* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *betwixt the hours of three and four in the afternoon of the ſame day, at a place called* ——— *in the ſaid county of* W. *in the king's highway there, two malefactors and felons to him the ſaid* A. I. *unknown, in and upon him the ſaid* A. I. *then and there being in the peace of god and of our lord the king, felonioufly did make an aſſault, and him the ſaid* A. I. *then and there felonioufly did put in great fear and danger of his life, and the ſum of* ——— *of lawful money of* Great Britain, *of the goods and chattels of him the ſaid* A. I. *from the perſon, and againſt the will of him the ſaid* A. I. *then and there violently and felonioufly did ſteal, take, and carry away: and that one of the ſaid malefactors and felons, to him the ſaid* A. I. *unknown, is a tall,*

tall, ſtrong man, and ſeemeth to be about the age of ——— years, is pitted in his face with the ſmall pox, and hath the ſcar of a wound under his left eye, and had then on a dark brown riding coat &c. and did ride upon a bay gelding with a ſtar on his forehead; and the other &c. And that after the ſaid felony and robbery committed, they the ſaid malefactors and felons to him the ſaid A. I. *unknown, did fly, and withdraw themſelves to places unknown, and are not yet apprehended: Theſe are therefore to command you forthwith to raiſe the power of the towns within your ſeveral precincts, and to make diligent ſearch therein, for the perſons above deſcribed, and to make freſh purſuit and hue and cry after them from town to town, and from county to county, as well by horſemen as by footmen; and to give due notice hereof in writing, deſcribing in ſuch notice the perſons and the offence aforeſaid, unto every next conſtable on every ſide, until they ſhall come to the ſea ſhore, or until the ſaid malefactors and felons ſhall be apprehended; and all perſons whom you or any of you ſhall, as well upon ſuch ſearch and purſuit, as otherwiſe, apprehend or cauſe to be apprehended, as juſtly ſuſpected for having committed the ſaid robbery and felony, that you do carry forthwith before ſome one of his ſaid majeſty's juſtices of the peace in and for the county where he or they ſhall be ſo apprehended, to be by ſuch juſtice examined, and dealt withal according to law. And hereof fail you not reſpectively, upon the peril that ſhall enſue thereon. Given under my hand and ſeal, at ——— in the ſaid county of* W. *the ——— day of ——— aforeſaid, in the year aforeſaid.*

Hundred.

1. IN ancient times, before the conqueſt, it was ordained for the more ſure keeping of the peace, that all free born men ſhould caſt themſelves into ſeveral companies, by ten in each company; and that every of thoſe ten men ſhould be ſurety and pledge for the forthcoming of his fellows. For which cauſe, theſe companies in ſome places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, ſo becauſe it was then alſo appointed, that ten of theſe companies ſhould at certain times meet together for their matters of greater weight, therefore that general aſſembly was, and yet is, called an hundred. *Lamb. Conſt.* Hundred whence ſo called.

2. If any homicide be committed, or dangerous wound given, in the day time, and the offender eſcape, the town ſhall be amerced; and if out of a town, the hundred ſhall be amerced. 2 *Haw.* 74. Hundred to be amerced for an eſcape.

3. The hundred ſhall make good the damages, in the caſes of robbery; cutting banks; cutting hop binds; burning houſes, barns, outhouſes, hovels, cocks, mows, or ſtacks of corn, ſtraw, hay, or wood; mines or pits of coal; deſtroying granaries, or corn intended for exportation; deſtroying turnpikes; or works of navigable Hundred anſwe able in divers other caſes.

vigable rivers; and the like: as may be ſeen under their proper titles.

Damages how to be levied.

4. Writs of execution which ſhall be ſued out againſt the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, ſhall by the ſheriff on receipt thereof be produced to two juſtices (1 Q. in or near the hundred; who ſhall cauſe a taxation to be made and levied by the conſtables in 30 days, for paying the plaintiff's coſts and damages, and alſo all ſuch neceſſary expences as any inhabitants ſhall have been at in defending ſuch action; the ſame being firſt proved on oath before the ſaid juſtices, and the attorney's bill taxed. And the ſaid ſums ſhall be paid to the ſheriff by the conſtables in ten days after the time is expired for collecting; and by the ſheriff, to the perſons intitled to receive the ſame, without any deduction or fee: all in the ſame manner, as is directed by the ſtatute of the 8 *G.* 2. *c.* 16. in caſes of robbery. 22 *G.* 2. *c.* 46. *ſ.* 34.

Hunting. See Game.

Husband. See Wife.

Idiots. See Lunaticks.
Imprisonment. See Arrest, Commitment.
Incest. See Lewdness.
Inclosures pulling down. See Wood.

Indictment.

I. Indictment, what.
II. What offences are indictable.
III. Within what time an indictment shall be brought.
IV. How far several offenders or several offences may be joined in one indictment.
V. Whether the grand jury may examine witnesses against the king.
VI. How many witnesses are requisite to an indictment.
VII. Whether a grand jury may find an indictment specially.
VIII. Indictment to be in English.
IX. Form of an indictment.
X. Charges of an indictment.

I. Indictment, what.

INDICTMENT cometh of the *French* word *enditer*, and signifieth in law, an accusation found by an inquest of twelve or more upon their oath. And as the *appeal* is ever the suit of the party, so the indictment is always the suit of the king, and as it were his declaration; and the party who prosecutes it, is a good witness to prove it. And when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *presentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquisition*. 1 *Inst.* 126. 2 *Haw.* 209.

II. What offences are indictable.

There can be no doubt, but that all capital crimes whatsoever, and also all kinds of inferior crimes of a publick nature, as misprisions, contempts, disturbances of the peace, oppressions, and all

all other misdemeanors whatsoever of a publick evil example against the *common law*, may be indicted; but no injuries of a private nature, unless they some way concern the king. 2 *Haw.* 210.

Also it seems to be a good general ground, that wherever a *statute* prohibits a matter of a publick grievance to the liberties and security of a subject; or commands a matter of publick convenience, as the repairing of the common streets of a town; an offender against such statute is punishable, not only at the suit of the party grieved, but also by way of indictment for his contempt of the statute, unless such method of proceeding do manifestly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought by the party (as it is said that he may in every action for doing a thing prohibited by statute); it seems questionable, whether he may afterwards be indicted, because that would make him liable to a second fine for the same offence. 2 *Haw.* 210.

But if a statute extend only to *private* persons, or if it extend to all persons in general, but chiefly concern disputes of a private nature, as those relating to distresses made by lords on their tenants; it is said that offences against such statute will hardly bear an indictment. 2 *Haw.* 211.

Also where a statute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it seemeth to be settled at this day, that it will not maintain an indictmment. 2 *Haw.* 211. *Str.* 679.

But Lord *Hale* distinguishes upon this, and says, that if a statute prohibit any act to be done, and by a substantive clause gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the *prohibitory clause*, and thereupon fined, but not to recover the penalty; but then it seems the fine ought not to exceed the penalty: but if the act be not prohibitory, but only that if any person shall do such a thing, he shall forfeit so much, to be recovered by action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding must be by action, bill, plaint, or information. 2 *H. H.* 171.

Also, where a statute adds a farther penalty, to an offence prohibited by the common law; there can be no doubt, but that the offender may be still indicted, if the prosecutor thinks fit, at the common law. And if the indictment for such offence conclude *against the form of the statute*, and cannot be made good as an indictment upon the statute, it seems to be now settled, that it may be maintained as an indictment at common law. 2 *Haw.* 211.

A fact amounting to a felony, is not indictable as a trespass. *L. Raym.* 712.

III. Within what time an indictment shall be brought.

By the 31 *El. c.* 5. All indictments upon any statute penal, whereby the forfeiture is limited to the king, shall be sued within two years after the offence committed: if the forfeiture is limited

to

to the king and profecutor, the fuit fhall be in one year; and in default thereof, the fame fhall be fued for the king, within two years after that year ended. But where a ftatute limits a fhorter time, the fuit fhall be brought within fuch time limited.

But for indictments of felonies, and other mifdemeanors where there is no forfeiture to the king, or to the king and profecutor, no time is limited by any ftatute; but the feveral acts of general pardon have the effect of a like limitation. The laft act of which kind was that of the 20 *G.* 2. *c.* 52. for certain offences committed before *June* 15, 1747.

IV. How far feveral offenders or feveral offences may be joined in one indictment.

1. If there be *one offender*, and *feveral offences* committed by him, as burglary and larceny, they may be contained in one indictment. 2 *H. H.* 173.

But in the cafe of *K.* and *Clendon*, *T.* 4 *G.* 2. There was an indictment fetting forth, that the defendant made an aflault upon *Sarah Beatniff* and *Elizabeth Cooper*, and did them beat, wound, and evil intreat. After verdict for the king, it was moved in arreft of judgment, that thefe were two diftinct offences, and therefore could not be laid in the fame indictment; and of that opinion was the court, and the judgment was arrefted. *Str.* 870.

2. If there be *feveral offenders* that commit the *fame offence*, though in law they are feveral offences in relation to the feveral offenders, yet they may be joined in one indictment; as if feveral commit a robbery, or burglary, or murder. 2 *H. H.* 173.

3. And fo it is, though the offences are of *feveral degrees*, but dependant one upon another, as the principal in the firft degree, and the principal in the fecond degree, to wit, prefent, aiding and abetting the principal, and acceffary before or after. 2 *H. H.* 173.

4. Alfo feveral perfons may be indicted in the fame indictment for *feveral offences of the fame nature*, as for keeping diforderly houfes; but the indictment ought to fet forth that they feverally did fo. 2 *H. H.* 173.

And this is only to be underftood where the offences may be joint, as in extortion, maintenance, receiving ftolen goods, and the like; and not where the offence is a feparate act in each, as in the cafe of *K.* againft *Philips* and others, *M.* 5 *G.* 2. Six were indicted in one indictment for *perjury*, and four of them pleading, were convicted. It was moved in arreft of judgment, that the crime of perjury is in its nature feveral, and two cannot be indicted together. And by the court, There may be great inconveniences if this is allowed; one may be defirous to have a *certiorari*, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence againft one: And they cited a cafe, *T.* 6 *An.* *Q.* againft *Hodfon* and others, where two were indicted for being fcolds, and compared to barratry, and it was held not to lie. And in the principal cafe judgment was arrefted. *Str.* 921.

In

In like manner, *E.* 11 *G. K* againſt *Weſton* and others. There was an indictment againſt ſix jointly and ſeverally for exerciſing a trade; and quaſhed, becauſe there ought to be diſtinct indictments. *Str.* 623.

5. Larcenies committed of ſeveral things, though *at ſeveral times*, and *from ſeveral perſons*, may be joined in one indictment. 2 *H. H.* 173.

V. Whether the grand jury may examine witneſſes againſt the king.

Lord *Hale* ſays, that the grand jury at the aſſizes or ſeſſions ought only to hear the evidence for the king, and in caſe there be probable evidence, they ought to find the bill, becauſe it is but an accuſation, and the party is to be put on his trial afterwards. 2 *H. H.* 157.

Which doctrine is alſo laid down by chief juſtice *Pemberton* in the caſe of the earl of *haſteſbury*, *St. Tr. V* 3. *p.* 415.

But the learned Editor of *Hale's Hiſtory* obſerves upon this, that Sir *John Hawkins* in his remarks on the ſaid caſe, *St. Tr. V.* 4. *p.* 183. unanſwerably ſhews, that a grand jury ought to have the ſame perſuaſion of the truth of the indictment as a petty jury, or a coroner's inqueſt; for they are ſworn to preſent the truth, and nothing but the truth

And Lord *Coke* ſays, that ſeeing indictments are the foundation of all, and are commonly found in the abſence of the party accuſed, it is neceſſary there ſhould be ſubſtantial proof. 3 *Inſt.* 25.

VI. How many witneſſes are requiſite to an indictment.

An indictment may be found upon the oath of one witneſs only, unleſs it be for high treaſon, which requires two witneſſes. 2 *Haw.* 256.

VII. Whether the grand jury may find an indictment ſpecially.

It ſeems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part falſe; but muſt either find a true bill or *ignoramus* for the whole; and that if they take upon them to find it ſpecially, or conditionally, or to be true for part only, and not for the reſt, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 *Haw.* 210.

VIII. Indictment to be in Engliſh.

All indictments, informations, inquiſitions and preſentments, ſhall be in *Engliſh*, and be written in a common legible hand, and not court hand; on pain of 50*l.* to him that ſhall ſue in three months. 4 *G.* 2. *c.* 26. 6 *G.* 2. *c.* 14.

IX. Form

IX. Form of an indictment.

In order to understand this matter rightly, it is judged requisite first to insert the intire form of an indictment, and then to take it in pieces, and explain the several parts of it in their order.

The instance which is chosen is on the statute of stabbing, 1 *J. c.* 8.

The *caption* of the indictment is no part of the indictment itself, but is the style or preamble, or return that is made from an inferior court to a superior, from whence a *certiorari* issues to remove; or when the whole record is made up in form; for whereas the record of the indictment, as it stands upon the file in the court where it is taken, is only thus, *The jurors for our lord the king upon their oath present*; when this comes to be returned upon a *certiorari*, it is more full and explicit, as follows: 2 *H. H.* 166.

Westmorland. AT *the general quarter sessions of the peace holden at* Appleby *in and for the county aforesaid, the seventh Day of* April *in the twenty-sixth Year of the reign of our sovereign lord* George *the second of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth, Before* J. P. *and* K. P. *esquires, and others their associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of* ——— *good and lawful men of the county aforesaid, sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid, it is presented*;

That John Armstrong *late of* Appleby *in the county aforesaid, yeoman, not having god before his eyes, but being moved and seduced by the instigation of the devil, on the thirtieth day of* March *in the twenty-sixth year of the reign of our said sovereign lord* George *the second of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth, at the hour of nine in the afternoon of the same day, with force and arms, at* Appleby *aforesaid in the county aforesaid, in and upon one* George Harrison *in the peace of god and of our said lord the king then and there being (the aforesaid* George Harrison *not having any weapon then drawn, nor the aforesaid* George Harrison *having first stricken the said* John Armstrong) *feloniously did make an assault; and that the aforesaid* John Armstrong, *with a certain drawn sword, of the value of five shillings, which he the said* John Armstrong *in his right hand then and there had and held, the said* George Harrison *in and upon the right side of the belly near the short ribs of him the said* George Harrison *(the aforesaid* George Harrison *as is aforesaid then and there not having any weapon drawn, nor the aforesaid* George Harrison *then and there having first stricken the said* John Armstrong) *then and there feloniously did stab and thrust, giving unto the said* George Harrison *then and there with the sword aforesaid, in form aforesaid, in and upon the right side of the belly near the short ribs of him the said* George Harrison, *one mortal wound of the breadth of one inch, and*

and of the depth of nine inches; of which said mortal wound, he the said George Harrison *then and there instantly died: And so the jurors aforesaid upon their oath aforesaid do say, that the said* John Armstrong *him the said* George Harrison *on the aforesaid thirtieth day of* March *in the year aforesaid, at* Appleby *aforesaid in the county aforesaid, in manner and form aforesaid, feloniously did kill; against the peace of our said lord the now king, his crown and dignity, and against the form of the statute in such case made and provided.*

Westmorland] The name of the county must be in the margin, or repeated in the body of the caption. 2 *H. H.* 166.

At the general quarter sessions of the peace] The court where the indictment is made, must be expressed; otherwise the caption is erroneous. 1 *H. H.* 166. 2 *Haw.* 252.

Holden at Appleby *in and for the county aforesaid*] It must appear where the sessions was held; and that the place, where it was held, is within the extent of the commission. 2 *H. H.* 166.

The seventh day of April *in the twenty-sixth year of the reign of our sovereign lord* George *the second*] It hath been adjudged, that if the caption of the indictment describe the sessions holden in the time past, and not in the time present; or as holden on such a day in such a year of the king, without ascertaining what king, it is insufficient. But it seems to be agreed, that it is sufficient to express the year of the king, without adding that of our Lord. 2 *Haw.* 255.

The seventh day] Figures to express numbers are not allowable in an indictment; but numbers must be expressed in words. 2 *H. H.* 170. *Cr. Cir.* 109. *Andr.* 137. *H.* 11 *G.* 2. *K.* and *Haddock*. Or at least in *Roman* numerals. *Str.* 261. *H.* 6 *G. K.* and *Philips*.

Before J. P. *and* K. P. *esquires, and others their associates*] It is not necessary to name all the justices, but only so many as are enabled to hold a sessions, and the rest may be supplied by the words *and others their associates*. 2 H. H. 166.

And altho' no sessions can be held without one of the justices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them, are of the *quorum*, for it is sufficient if *de facto* the sessions be held before him or them that are of the *quorum*, altho' not so mentioned, and so is the usual course. 2 *H. H.* 167.

And also to hear and determine &c.] These words are necessary, because without this clause (by the commission) they cannot proceed by indictment. 2 *H. H.* 166. *Str.* 442.

By the oath] If the caption concludes that *it is presented*, without saying *on their oath*, it shall be quashed; for their presentment must be upon oath, and so returned. 2 *H. H.* 168.

By the oath of - - - - -] It must name the jurors that presented the offence; and therefore by the oath of *A. B. C. D.* and others, is not good; for it may be the presentment was by a less number than 12, or that some one of them was incapacitated who might influence all the rest, as for instance a person outlawed; in which case the indictment may be quashed by plea. 2 *H. H.* 167.

Good and lawful men of the county aforesaid] These words also, Lord *Hale* saith, are necessary. 2 *H. H.* 167. But Mr. *Hawkins* says, they have been often overruled; because all men shall be intended to be honest and lawful, till the contrary appear. 2 *Haw.* 215.

Sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid] These words also seem requisite to be inserted. 2 *H. H.* 167. But yet do not seem to be absolutely necessary. L. *Raym.* 710.

It is presented; that John Armstrong, *late of* Appleby *in the county aforesaid, yeoman*] The name of the party indicted regularly ought to be inserted, and inserted truly in every indictment. 2 *H. H.* 175.

But the inhabitants of a parish, may be indicted for not repairing the highway, although no person is particularly named. *Wood* 1067.

It is said that no person indicted can take any advantage of a mistaken surname in the indictment, notwithstanding such surname hath no manner of affinity with his true one, and he was never known by it. 2 *Haw.* 230, 1, 2, 3. 2 *H. H.* 176.

But the mistake of the christian name is pleadable, and the party shall be dismissed from that indictment. 2 *H. H.* 176.

But the safest way is to allow his plea of *misnomer*, both as to his surname and as to his christian name, for he that pleads *misnomer* of either, must in the same plea set forth what his true name is, and then he concludes himself, and if the grand jury be not discharged, the indictment may presently be amended by the grand jury, and returned according to the name he gives himself. 2 *H. H.* 176.

Also an indictment naming the defendant by two christian names is not good. L. *Raym.* 562.

If the *county* is in the margin, and the indictment sets forth the fact to be done at such a place *in the county aforesaid*, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at such a place in the county aforesaid, vitiates the indictment, because two counties are named before, and therefore it is uncertain to which it refers. *Crown Cir.* 115, 116.

By the 1 *H.* 5. *c.* 5. In all indictments on which process of outlawry lieth, to the names of the defendants *additions* shall be made of their estate, or degree, or mistery, and of the towns,

or hamlets, or places, and counties where they were or be conversant.

But altho' the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead not guilty, without taking advantage of that defect, he shall never alledge the *misnomer* or want of addition to stop his trial or judgment; for by such his appearance, and pleading to issue, the indictment is affirmed, and the *misnomer* or want of addition salved. 2 *H. H.* 176.

And if several persons be indicted for one offence, *misnomer* or want of addition of one, quasheth the indictment only against him, and the rest shall be put to answer; for they are in law as several indictments. 2 *H. H.* 177.

And it is the common practice, where an indictment is insufficient, while the grand jury is before the court, to amend it by their consent, in a matter of form, as the name or addition of the party, or the like. 2 *Haw.* 245.

Not having god before his eyes, but being moved and seduced by the instigation of the devil] I do not find it asserted by any authority, that these words are necessary in an indictment.

On the thirtieth day of March *in the twenty-sixth year of the reign* &c.] No indictment can be good, without precisely shewing a certain *day* of the material facts alledged in it. 2 *Haw.* 235.

And if the offence be done in the night, before midnight, the indictment shall suppose it to be done in the day before; and if it happen after midnight, then it must say, it was done that day after. *Lamb.* 492.

And altho' the day be inserted, yet if the *year* is not likewise inserted, the indictment is insufficient. 2 *H. H.* 177.

But where an indictment charges a man with a bare omission, as the not scouring such a ditch, it is said, that it needs not shew any time. 2 *Haw.* 236.

It is most regular to set forth the year, by shewing the year of the king; yet this may be dispensed with for special reasons, if the very year be otherwise sufficiently expressed. 2 *Haw.* 236.

And if it say, on such a day last past, without shewing in what year, that is good enough; for the certainty may be found out by the style of the sessions. *Lamb.* 491.

But tho' the day or year be mistaken in the indictment, yet if the offence were committed in the same county, tho' at another time, the offender ought to be found guilty; but then it may be requisite, if any escheat or forfeiture of land be conceived in the case, for the petit jury to find the true time of the offence committed; and therefore it is best in the indictments to set down the times as truly as can be, tho' it be not of absolute necessity to the defendant's conviction. 2 *H. H.* 179.

And this the rather, because the jury are to find the indictment upon their oaths. *Dalt. c.* 184.

Upon which ground, namely, because the jury are sworn to find the whole truth, and nothing but the truth, it is best to lay

all the facts in the indictment as near to the truth as may be; and not to say, in an indictment for a small assault (for instance), wherein the person assaulted received little or no bodily hurt, that such a one *with swords, staves, and pistols, beat, bruised, and wounded him, so that his life was greatly despaired of*; nor to say in an indictment for an highway being obstructed, that the king's subjects cannot go thereon, *without manifest danger of their lives*; and the like. Which kind of words, as they are not at all necessary, so they may stagger an honest man upon his oath, to find the fact as so laid.

At the hour of nine in the afternoon of the same day] It is not necessary to mention the *hour*, in an indictment. 2 *Haw.* 235.

With force and arms] By the 37 *H.* 8. *c.* 8. it is enacted, that whereas it had been commonly used in indictments, to put in the same the words *vi & armis*, and in divers of the same indictments to declare the manner of the force and arms, *viz. baculis, cultellis, arcubus, & sagittis*, or such like, where in truth the parties had no manner of such weapons at the time of the offence committed; therefore for the future, these words, or such like, shall not of necessity be put in any inquisition or indictment.

But yet where such words are proper and pertinent, it is safe and advisable to insert them, if it be to no other purpose than to aggravate the offence. 2 *Haw.* 242.

At Appleby *aforesaid, in the county aforesaid*] No indictment can be good, without expressly shewing some *place* wherein the offence was committed, which must appear to have been within the jurisdiction of the court. 2 *Haw.* 236.

But a mistake of the place will not be material upon the evidence, on not guilty pleaded, if the fact be proved at some other place in the same county. 2 *Haw.* 237.

And it is not sufficient that the county be expressed in the margent, but the vill where the offence was committed must be alledged to be in the county named in the margent, or, *in the county aforesaid*, which seems to be sufficient where but one county is named before, but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 *Haw.* 220. 2 *H. H.* 180.

In and upon one George Harrison] Wherever the person injured is known to the jurors, his name ought to be put in the indictment. 2 *Haw.* 232.

But if they know not his name, an indictment for the murder of a person unknown, or for stealing the goods of a person unknown, is good. 2 *H. H.* 181.

Also there is no need of an addition of the person upon whom the offence is committed, unless there be a plurality of persons of the same name; neither then is it essential to the indictment, tho' sometimes it may be convenient for distinction sake to add it. 2 *H. H.* 182.

In the peace of god, and of our ſaid lord the king, then and there being] It is uſual to alledge this, but not neceſſary, and poſſibly not true, for he might be breaking the peace at the time. 2 *H. H.* 186.

The aforeſaid George Harriſon *not having any weapon then drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong] An indictment grounded upon an offence made by act of parliament, muſt by expreſs words bring the offence within the ſubſtantial deſcription made in the act of parliament; and thoſe circumſtances mentioned in the ſtatute to make up the offence, ſhall not be ſupplied by the general concluſion *againſt the form of the ſtatute.* 2 H. H. 170.

And ſo it is, if an act of parliament ouſt clergy in certain caſes, as murder *of malice forethought*, robbery *in or near the highway*, tho' the offences themſelves were at common law, yet becauſe at common law within clergy, they ſhall not be ouſted of clergy, though convicted, unleſs theſe circumſtances, as *of malice forethought*, or *near the highway*, be expreſſed in the indictment. 2 *H. H.* 170.

But there is no neceſſity in an indictment on a publick ſtatute, to recite ſuch ſtatute; for the judges are bound *ex officio* to take notice of all publick ſtatutes. 2 *Haw.* 245.

Yet if the proſecutor take upon him to recite it, and materially vary from a ſubſtantial part of the purview of the ſtatute, and conclude *againſt the form of the ſtatute aforeſaid*, he vitiates the indictment. 2 *Haw.* 246.

Alſo it ſeems to be generally agreed, that a miſrecital of the place or day at which the parliament was holden, vitiates an indictment. 2 *Haw.* 246.

And it hath been adjudged, that a miſrecital of the title of a ſtatute is fatal. 2 *Haw.* 247.

But there is no need to alledge in an indictment, that the defendant is not within the benefit of the proviſoes of the ſtatute; altho' the ſame may be neceſſary in a *conviction:* for ſince no plea can be admitted to a conviction, and the defendant can have no remedy againſt it, but from an exception to ſome defect appearing in the face of it, and all the proceedings are in a ſummary manner, it is but reaſonable that ſuch a conviction ſhould have the higheſt certainty. *Haw.* 250. 2 *H. H.* 170, 1.

Feloniouſly did make an aſſault] There are ſeveral words of art which the law hath appropriated for the deſcription of the offence, which no circumlocution will ſupply; as *feloniouſly*, in the indictment of any felony; *burglariouſly*, in an indictment of burglary; and the like. 2 *H. H.* 184.

And if a man be indicted that he *ſtole*, and it is not ſaid *feloniouſly*, this indictment imports but a treſpaſs. 2 *H. H.* 172.

With a certain drawn ſword] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poiſoning, or ſtrangling, it doth not maintain the indictment upon evidence. 2 *H. H.* 185.

Of the value of five ſhillings] Regularly it ought to ſet forth the price of the ſword or weapon, or elſe ſay of no value; for the weapon is a deodand forfeited to the king, and the townſhip ſhall be charged for the value, if delivered to them; but this ſeems not to be eſſential to the indictment. 2 *H. H.* 185.

Which he the ſaid John Armſtrong *in his right hand then and there had and held*] It muſt ſhew in what hand he held his ſword. 2 *H. H.* 185.

In and upon the right ſide of the belly near the ſhort ribs of him the ſaid George Harriſon] There muſt be a *certainty* of the offence committed, and nothing material ſhall be taken by intendment or implication; but the ſpecial manner of the whole fact ought to be ſet forth with certainty. 2 *Haw.* 225, 227.

And therefore in the caſe of murder, it ought to ſhew in what part of the body the perſon was wounded? and therefore if it be on his arm, or hand, or ſide, without ſaying whether right or left, it is not good. 2 *H. H.* 185.

If theft be alledged in any thing, the indictment muſt ſet forth the value of the thing ſtolen; that it may appear, whether it be grand or petit larceny. 2 *H. H.* 183.

In like manner, an indictment that the defendant took and carried away ſuch a perſon's goods and chattels, without ſhewing what in certain, as one horſe, one cow, is not good. 2 *H. H.* 182.

An indictment that the defendant is a common highwayman, a common defamer, a common diſturber of the peace, and the like, is not good; becauſe it is too general, and contains not the particular matter wherein the offence was committed. 2 *H. H.* 182.

In like manner an indictment for divers ſcandalous, threatning, and contemptuous words, ſpoken of a juſtice of the peace, is not good, but ought to ſet forth the words in ſpecial. *Str.* 699.

An indictment for diſobeying an order of juſtices, muſt find poſitively, that ſuch an order was made, and not by way of recital, *that wherras* ——— L. *Raym.* 1363.

But in an indictment on a conviction, it is not neceſſary to ſet forth the conviction at large, but only ſhortly, that ſuch a one was before ſuch and ſuch juſtices convicted, according to the form of the ſtatute, and thereupon a warrant was iſſued *&c.* L. *Raym.* 1196.

Then and there felonioufly did ſtab and thruſt] In an indictment it is beſt, and often neceſſary, to repeat the time and place, to the ſeveral parts of the fact. 2 *H. H.* 178.

Thus in an indictment of murder or manſlaughter, as well the day and place of the ſtroke, or other act done, as of the death, muſt be expreſſed; the former, becauſe the eſcheat or forfeiture of lands relates thereto; the latter, becauſe it muſt appear, that the death was within the year and day after the ſtroke. 2 *H. H.* 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to

be ſhewed; but this is not neceſſary in all caſes, as namely, where a limb is cut off; ſo it may be alſo a dry blow. 2 *H. H.* 186.

But tho' the manner and place of the hurt and its nature be requiſite, as to the formality of the indictment, and it is fit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is ſufficient to maintain the indictment. 2 *H. H.* 186.

Againſt the peace of our ſaid lord the now king] An indictment without concluding againſt the peace, is inſufficient, tho' it be but for uſing a trade not having been an apprentice; for every offence againſt a ſtatute is againſt the peace, and ought ſo to be laid. 2 *H. H.* 188.

Alſo an indictment that concludes againſt the peace, and ſaith not *of our lord the king*, is inſufficient. 2 *H. H.* 188.

His crown and dignity] An indictment need not conclude *againſt his crown and dignity*, though it be uſual in many indictments. 2 *H. H.* 188.

And againſt the form of the ſtatute in ſuch caſe made and provided] Regularly, if a ſtatute only make an offence, or alter an offence from one crime to another, as making a bare miſdemeanor to become a felony, the indictmnnt for ſuch new made offence, or new made felony, muſt conclude againſt the form of the ſtatute, or otherwiſe it is inſufficient. 2 *H. H.* 192.

But if a man be indicted for an offence, which was at common law, and concludes againſt the form of the ſtatute, but in truth it is not brought by the indictment within the ſtatute, it ſhall be quaſhed, and the party ſhall not be put to anſwer it as an offence at common law. 2 *H. H.* 171.

And if an offence were felony at common law, but a ſpecial act of parliament ouſts the offender of ſome benefit that the common law allowed him, when certain circumſtances are in the fact; tho' the body of ſuch indictment muſt expreſs thoſe circumſtances, according as they are preſcribed in the ſtatute, yet the indictment need not conclude againſt the form of the ſtatute: Thus on the ſtatute of the 8 *El. c.* 4. in caſe of pick-pockets, the body of the indictment muſt bring them within the expreſs purview of the ſtatute, or otherwiſe they ſhall have the benefit of clergy; but it need not conclude againſt the form of the ſtatute, neither is it uſual in ſuch caſes, for it was felony before, and the ſtatute doth not give a new puniſhment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it ſhould conclude in ſuch caſe againſt the form of the ſtatute, it would not vitiate the indictment, but would be only ſurpluſage. 2 *H. H.* 190.

If an act of parliament, making an offence, be but temporary, and made perpetual by another ſtatute, the indictment concluding againſt the form of the *ſtatute*, is good. 2 *H. H.* 173.

If the former ſtatute be diſcontinued, and revived by another ſtatute, the beſt way is to conclude againſt the form of the *ſta-*

tutes; tho' there is good opinion, that it is good enough to conclude againſt the form of the firſt ſtatute. 2 *H. H.* 173.

If one ſtatute be relative to another, as where the former makes the offence, the latter adds a penalty; the indictment ought to conclude againſt the form of the ſtatutes. 2 *H. H.* 173.

X. Charges of an indictment.

By the 10 & 11 *W. c.* 23. No clerk of aſſize, clerk of the peace, or other perſon, ſhall take any fee of any perſon bound over to give evidence againſt a traytor or felon, for the diſcharge of his recognizance; nor ſhall take more than 2*s.* for drawing any bill of indictment againſt any ſuch felon: on pain of 5*l.* to the party grieved, with full coſts. And if he draw a bill defective, he ſhall draw a new one *gratis*, on the like pain.

For the drawing of indictments for other miſdemeanors, not being treaſon or felony, no fee is limited by any ſtatute; and therefore the ſame dependeth upon the cuſtom and ancient uſage.

Condition of a recognizance to prefer a bill of indictment.

THE *condition of this recognizance is ſuch, That if the abovebound* A. I. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, and then and there prefer a bill of indictment againſt* A. O. *late of* ——— *yeoman, for the felonious taking and carrying away of* ——— *the property of* ——— *and ſhall then and there give evidence concerning the ſame, to the jurors who ſhall inquire thereof on the part of our ſaid lord the king: And in caſe the ſame be found a true bill, Then if the ſaid* A. I. *ſhall perſonally appear before the jurors who ſhall paſs upon the trial of the ſaid* A. O. *and give evidence upon the ſaid indictment, and not depart without leave of the court, Then this recognizance to be void.*

Condition of a recognizance to anſwer to an indictment.

THE *condition of this recognizance is ſuch, That if the abovebound* A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, then and there to anſwer to an indictment to be preferred againſt him by* A. I. *of* ——— *yeoman, for aſſaulting and beating him the ſaid* A. I. *and not depart without leave of the court, Then this recognizance to be void.*

Infants.

Infant, who.

1. BY an infant, or minor, is meant any one who is under the age of 21 years. 1 *Inſt.* 2.

Committing a crime under 14.

2. Thoſe who are under a natural diſability of diſtinguiſhing between good and evil, as infants under the age of 14 years, which is called the age of diſcretion, are not puniſhable by any criminal proſecution whatſoever. But this muſt be underſtood with ſome allowance; for if it appear by the circumſtances, that an infant under the age of diſcretion, could diſtinguiſh between good and evil, as if one of the age of nine or ten years, kill another and hide the body, or make excuſes, or hide himſelf, he may be convicted and condemned, and forfeit as much as if he were of full age: but in ſuch caſe, the judges will in prudence reſpite the execution, in order to get a pardon; and it is ſaid, that if an infant apparently wanting diſcretion, be indicted and found guilty of felony, the juſtices themſelves may diſmiſs him, without a pardon. And in general it muſt be left to the diſcretion of the judge, upon the circumſtances of the caſe, how far an infant, under that age, is *capax doli*, or hath knowledge to diſcern betwixt good and evil. *Hale's Pl.* 43. 1 *Haw.* 2. 1 *H. H.* 18.

Under ſeven.

3. But within ſeven years of age, there can be no guilt whatſoever of any capital offence: the infant may be chaſtized by his parents or tutors, but cannot be capitally puniſhed, becauſe he cannot be guilty; and if he be indicted for ſuch an offence as is in its nature capital, he muſt be acquitted. 1 *H. H.* 19, 20.

Committing a rape.

4. An infant under 14, is preſumed by law unable to commit a rape, and therefore it ſeems cannot be guilty of it; and tho' in other felonies *malitia ſupplet ætatem* in ſome caſes, yet it ſeems as to this fact the law preſumes him impotent, as well as wanting diſcretion. 1 *H. H.* 630.

Forcible entry.

5. An infant may be guilty of forcible entry, in reſpect of perſonal actual violence. 1 *Haw.* 147. And the juſtices may fine him therefore: But yet it ſhall be good diſcretion in the juſtices of the peace, to forbear the impriſonment of ſuch infant. *Dalt. c.* 126.

Becauſe it is ſaid, that he ſhall not be ſubject to corporal puniſhment, by force of the general words of any ſtatute, wherein he is not expreſly named. 1 *Haw.* 147.

Shall be liable to damages for treſpaſs.

6. But if one, who wants diſcretion, commit a treſpaſs, againſt the perſon or poſſeſſion of another, he ſhall nevertheleſs be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2. 1 *H. H.* 15, 16.

May bring an appeal.

7. An infant may bring an appeal, altho' it take from the defendant the benefit of waging battle; but he muſt proſecute ſuch appeal by a guardian. 2 *Haw.* 161, 162.

An appeal likewiſe may be brought againſt him. 2 *Haw.* 168.

8. An

8. An infant under the age of diſcretion cannot be an approver; becauſe he cannot take the oath requiſite in that caſe. 2 *Haw.* 205. Cannot be an approver.

9. In caſe of rape, committed upon a child of 12 years old, ſuch child may be ſworn as evidence; yea, if ſhe be under that age, if it appear to the court that ſhe knows and conſiders the obligation of an oath, ſhe may be ſworn. And in caſe of evidence againſt witches, an infant of nine years old was ſworn. 1 *H. H.* 634. *Dalt.* 378. How far he may be a witneſs.

10. An infant before 21 years of age, ſhall not be ſworn in an inqueſt. 7 *W. c.* 32. *ſ.* 4. 1 *Inſt.* 172. Whether he may be a juror.

11. A woman at nine years of age may have dower; at 12 may conſent to marriage; and at 14 is of age of diſcretion, and may chuſe a guardian. 1 *Inſt.* 78. Woman's age of dower, marriage, and chuſing guardian.

12. A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of diſcretion, may conſent to marriage, and chuſe his guardian. 1 *Inſt.* 78. Man's age of allegiance, marriage, and chuſing guardian.

13. At 21, and not before, perſons may bind themſelves by any deed, and aliene lands, goods, and chattels. 1 *Inſt.* 171. Cannot make a deed.

14. Upon which ground, infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their ſureties only. Nor enter into recognizance.

15. But an infant may bind himſelf to pay for his neceſſary meat, drink, apparel, phyſick, and ſuch like; and alſo for his good teaching or inſtruction, whereby he may profit himſelf afterwards: but if he binds himſelf in an obligation, or other writing, with a penalty for the payment of any of theſe, that obligation ſhall not bind him. 1 *Inſt.* 172. May contract for neceſſaries.

And in *Earle*'s caſe, 1 *Salk.* 387. it is ſaid, that an infant may buy neceſſaries, but cannot borrow money to buy; for he may miſapply the money, and therefore the law will not truſt him, but at the peril of the lender, who muſt lay it out for him, or ſee it laid out.

16. Alſo other things of neceſſity ſhall bind him, as a preſentation to a benefice; for otherwiſe the lapſe ſhall incur againſt him. 1 *Inſt.* 172. May preſent to a benefice.

17. And infants ſeiſed of eſtates in truſt, or by way of mortgage, may make conveyances thereof, as the courts of chancery or exchequer ſhall direct. 7 *An. c.* 19. May convey in a court of equity.

18. Alſo, an infant hath, without conſent of any other, capacity to purchaſe, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cauſe to be alledged, waive, or diſagree to the purchaſe: and ſo may his heirs after him, if he agree not thereunto after his full age. 1 *Inſt.* 2. May purchaſe.

19. The common law ſeems not to have determined preciſely, at what age one may make a teſtament of a perſonal eſtate: it is generally allowed, that it may be made at the age of 18. and ſome ſay under, for the common law will not prohibit the ſpiritual court in ſuch caſes. 1 *Inſt.* 89. 1 *H. H.* 17. May make a will.

May be an executor.

20. A person is of age to be an executor at 17; and an administration of any one during the minority of an infant, ceaseth when the infant comes to that age. 5 *Co. Pigot's* case. 1 *H. H.* 17.

May bequeath the tuition of his children.

21. Any person having child or children, under 21 years of age, and not married, may by deed or will attested by two witnesses, dispose of the custody and tuition of such child or children, until they shall be of the age of 21, or for a lesser time; and this, whether such parent be within or above the age of 21. 12 *C.* 2. *c.* 24. *s.* 8.

May sue by prochein amy.

22. An infant cannot answer but by guardian; but he may sue either by his next friend or by guardian. 3 *Salk.* 196.

In what case he may release a debt.

23. If an infant of the age of 17 years release a debt, this is void; but if an infant make the debtor his executor, this is a good release in law of the action. 1 *Inst.* 264.

At what age he may be bound apprentice.

24. By the 5 *El. c.* 4. Persons above the age of 10 years, by their own consent and agreement, may be bound apprentices.

And by the 5 *El. c.* 5. Any person, above seven years old, may be bound apprentice to the sea service.

By the 43 *El. c.* 2. No age is limited for the binding of parish apprentices; so that it seemeth they may be bound at the age of seven, when they cease to be nurse children, and consequently may be taken from the mother.

Infant apprentice embezilling goods.

25. It shall be felony without benefit of clergy, to steal goods to the value of 40 *s.* out of an house, tho' the house be not broken open: but this shall no textend to apprentices under 15 years of age. 12 *An. st.* 1. *c.* 7.

Infant servant embezilling goods.

26. Servants above the age of 18, embezilling their master's goods to the value of 40 *s.* shall be punished as felons. 21 *H.* 8. *c.* 7.

Information.

Information at the suit of the king. At the suit of the party.

1. INformations are of two kinds; 1. Such as are merely at the suit of the king: And, 2. Such as are partly the suit of the king, and partly the suit of the party; which are commonly called informations *qui tam*, from those words in the information when the proceedings were in Latin, *qui tam pro domino rege quam pro ipso &c.* 2 Haw. 259.

Private action upon a statute.

Action popular.

2. Of near affinity to an information *qui tam*, is an action upon a statute: which is either a *private* action, which is, when an action is given upon a statute to the king, and to the *party grieved* only; or, a *popular* action, which is, where the action is given to the king, or to any one that will sue for the king and himself. *Wood* 936, 7.

In what case the king may have the whole penalty.

3. But if the king commenceth his suit before the informer, the king shall have the whole forfeiture (because in such case he also is the informer); and he may, before the informer begins his suit,

ſuit, releaſe the penalty to the offender, and bar all others; but if, after a popular action is brought by the informer, the king's attorney will enter *ulterius non vult proſequi*, the informer may proſecute for his part. *Wood* 937.

4. Where a matter concerns the publick government, and no particular perſon is intitled to an action, there an information will lie. 18 *El. c.* 5. *f.* 1. 1 *Salk.* 374. In what caſes an information will lie.

5. An information lies, at the *common law*, for a great variety of crimes leſs than capital, as batteries, cheats, perjuries, riots, extortions, nuſances, contempts, and ſuch like; and alſo it lies in very many caſes by *ſtatute*, wherein the offender is liable to a fine or other penalty. *Finch* 340. 2 *Haw.* 260. Id.

6. And in general, it ſeems that of common right an information *at the ſuit of the king*, or an action in the nature thereof, may be brought for offences againſt ſtatutes, whether they be mentioned by ſuch ſtatutes or not, unleſs other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 *Haw.* 260. Id.

7. But an information or action *qui tam* will not lie on any ſtatute, which prohibits a thing as being an immediate offence againſt the publick good in general, under a certain penalty, unleſs the whole or part of ſuch penalty be expreſly given to him who will ſue for it; becauſe otherwiſe it goes to the king, and nothing can be demanded by the party: But where ſuch ſtatute gives any part of ſuch penalty to him who will ſue for it by action or information, any one may bring ſuch action or information, and lay his demand *as well for our lord the king, as for himſelf.* 2 Haw. 265. Id.

8. Alſo where a ſtatute prohibits or commands a thing, the doing or omiſſion whereof is an immediate danger to the party, and alſo highly concerns the peace, ſafety, or good government of the publick, or the honour of the king, or of his ſupreme courts of juſtice, it ſeems to be the general opinion, that the party grieved may bring his action *qui tam* on ſuch ſtatute. 2 *Haw.* 265. Id.

9. By the 31 El. c. 5. *All actions, ſuits, bills, indictments, or informations on any penal ſtatute, whereby the forfeiture is limited to the king, ſhall be brought within two years after the offence committed; if limited to the king, and to any other who ſhall proſecute, then within one year; and in default of ſuch proſecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by ſtatute to be brought within ſhorter time, then they ſhall be brought within ſuch time limited.* f. 5, 6. In what time it ſhall be brought.

On any penal ſtatute] But if an offence prohibited by a penal ſtatute, be alſo an offence at common law; the proſecution of it, as of an offence at common law, is no way reſtrained hereby. 2 *Haw.* 272.

To any other who ſhall proſecute] That is, to a common informer; and therefore the *party grieved* is not within the reſtraint of this ſtatute, but may ſue in the ſame manner as before. 2 *Haw.* 272.

10. If two informations be exhibited on the ſame day, for the ſame offence, they mutually abate one another. 2 *Haw.* 275. Two informations on the ſame day.

11. By

In what county it shall be laid.

11. By the 21 J. c. 4. *All offences against any penal statute, for which any common informer may ground a popular action, bill, plaint, suit, or information, before the judges of assize, or justices of the peace in their general or quarter sessions (having power to hear and determine the same), shall be prosecuted in the county where they were committed, and not elsewhere: and if the offence is not proved to have been committed in the same county, the defendant shall be found not guilty.* s. 1, 2.

Provided, that informations, suits, or actions, against popish recusants, or persons charged with maintenance, champerty, or buying of titles, may be laid in any county. s. 5.

Against any penal statute] *H.* 8 *W. K.* and *Gaul. Holt* Ch. J. said, ten judges had agreed, that this statute doth not extend to any offence created since; so that prosecutions on subsequent penal statutes are not restrained thereby; but this statute is as to them, as it were, repealed *pro tanto*. 1 *Salk.* 372.

For which any common informer may ground a popular action] Therefore this extends not to any suit by a party grieved, or by the attorney general; but only to those brought by common informers. 2 *Haw.* 269, 270.

General or quarter sessions, having power to hear and determine the same] Yet this gives no jurisdiction to justices of peace, which they had not before; but only appoints, that where informations might have been brought in the courts at *Westminster* or before justices of the peace, such informations shall be now brought before justices of the peace only. *Cro. Car.* 112.

In the county where they were committed] *H.* 7 *G. Smith* and *Potter*. In the king's bench. In a *qui tam* on the 5 *Eliz.* for exercising a trade, without an apprenticeship, it was moved to stay the proceedings, because the nominal plaintiff had released, and the fact was laid at *Cambridge*, whereas the jurisdiction of the king's bench is at last settled to be restrained by the 21 *J. c.* 4. to actions arising in the county where the king's bench sits, so that if they were to go on to trial, the plaintiff could have no effect of his suit. And of this opinion was the court, and they made a rule that proceedings should be stayed. *Str.* 415.

And not elsewhere] But where a subsequent statute gives a remedy for the recovery of a penalty in any court of record generally, it so far impliedly repeals this restraint, and consequently leaves the informer at his liberty to sue in the courts at *Westminster*. 2 *Haw.* 270.

Also, where a statute limits suits by an informer *qui tam*, to other courts than those of *Westminster hall*; yet any one may, by construction of law, exhibit an information in the exchequer, for the whole penalty, for the use of the king. 2 *Haw.* 268.

Sessions hath not power without express words.

12. If jurisdiction be given to the sessions to hear and determine, and it is not said by information; this shall be by indictment, and not information. *Cro. Car.* 112.

13. By

13. By the 18 El. c. 5. *Upon every information which ſhall be exhibited by a* (common) *informer, except for maintenance, champerty, buying of titles, or embracery; a note ſhall be made of the day, month, and year of the exhibiting thereof; and it ſhall be taken to be of record from that time forward, and not before: and no proceſs ſhall be iſſued on ſuch information, till it be exhibited in form aforeſaid.* ſ. 1. Time of exhibiting the information to be entred.

14. And by the 21 J. c. 4. *No officer ſhall enter any information, bill or plaint, count or declaration, till the informer hath made oath before ſome of the judges of the court, that the offence was not committed in any other county, and that he believeth in his conſcience, that the offence was committed within a year before the information or ſuit; the oath to be there entred of record.* ſ. 3. Oath to be made on exhibiting the information.

15. And, in the court of king's bench, *the clerk of the crown ſhall not (except by order of court) exhibit or receive any information in the name of the maſter of the crown office, for treſpaſſes, batteries, or other miſdemeanors, or iſſue any proceſs thereupon, before he ſhall have taken, or ſhall have delivered to him, a recognizance from the proſecutor, with his place of abode, title, or profeſſion, to be entred,—to the perſon againſt whom the information is exhibited, in the penalty of* 20l. *that he will effectually proſecute ſuch information, and abide by and obſerve ſuch orders as the ſaid court ſhall direct; which recognizance the ſaid clerk of the crown, and alſo every juſtice of the peace where the cauſe of ſuch information ſhall ariſe, are empowered to take; after the taking or receipt whereof, he ſhall make an entry thereof upon record, and ſhall file a memorandum thereof in ſome publick place in his office, to which all perſons may reſort without fee.* 21 J. c. 4. ſ. 2, 6. Recognizance to be given.

In the name of the maſter of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 *Haw.* 262.

16. And the general practice of the court of king's bench is, not to order an information to be filed, without firſt making a rule upon the defendant to ſhew cauſe to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of ſome offence of an enormous kind, or dangerous tendency. The defendant muſt be perſonally ſerved with the rule, and if he do not at the day given for that purpoſe ſatisfy the court by affidavits, that the ſubſtance of the charge is falſe or frivolous, or other reaſonable cauſe againſt the proſecution, the court uſually grants the information. *Barl. Inform.* Rule to ſhew cauſe.

17. By the 21 J. c. 4. *The like proceſs ſhall be awarded, upon an information by a common informer, as in an action of treſpaſs* vi & armis *at the common law.* ſ. 1. Proceſs on an information.

And conſequently, the proceſs in all ſuch ſuits muſt be by attachment, or *pone per vadios*, and after by diſtreſs infinite, where by the return the party appears to be ſufficient, otherwiſe by *capias.* 2 *Haw.* 284.

18. And *on every proceſs upon an information by a common informer, ſhall be indorſed as well the party's name that purſueth the proceſs, as alſo the ſtatute upon which the information is grounded.* 18 El. c. 5. ſ. 1. Proceſs to be indorſed.

19. But

Process on a criminal information.

19. But on a *criminal* information, it is the usual practice of the crown office, first, to award a *subpœna*; and after the return thereof, if no appearance be entred in four days, and an affidavit be made of the service of the *subpœna*, to make out a *capias* of course, where the defendants are informed against in their private capacity, and a *distringas*, where they are sued as a corporation aggregate. 2 *Haw.* 284.

General issue.

20. *If any information, suit, or action, shall be brought against any person on a penal statute, the defendant may plead the general issue, and give the special matter in evidence.* 21 J. c. 4. s. 4.

Information not quashed upon motion.

21. The court will not generally quash an information upon motion, but the party must either plead, demur, or move in arrest of judgment. 1 *Salk.* 372.

Certainty required in an information.

22. But seeing that an information differs from an indictment in little more than this, that the one is found by the oath of 12 men, and the other is not so found, but is only the allegation of the officer or person who exhibits it; whatsoever certainty is required in an indictment, the same at least is necessary also in an information; and consequently as all the material parts of the crime must be precisely found in the one, so must they be precisely alledged in the other, and not by way of argument or recital. 2 *Haw.* 260, 1.

Not aided by the statutes of jeofails.

23. And therefore the statutes of jeofails (from *J'ay failli*, I have failed), or the statutes that do remedy oversights in pleading, extend not to informations. *Wood* 939.

Information good as to part.

24. If an information contain several offences against a statute, and be well laid as to some of them, but defective as to the rest, the informer may have judgment for so much as is well laid. 2 *Haw.* 266.

Costs against the plaintiff.

25. Generally, *if a* (common) *informer shall willingly delay his suit, or discontinue, or be nonsuit, or shall have a verdict or judgment against him, he shall pay costs to the defendant.* 18 El. c. 5. s. 3.

And in the court of king's bench particularly, *if the defendant shall appear and plead to issue, and the prosecutor shall not at his own costs, within a year after issue joined, procure the same to be tried, or if a verdict passes for the defendant, or the informer procure a* noli prosequi *to be entred, the said court of king's bench may award the defendant his costs, unless the judge shall certify that there was a reasonable cause for exhibiting such information. And if the informer shall not, in three months after such costs taxed, and demand made, pay the same, the defendant shall have the benefit of the recognizance abovementioned, to compel him thereunto.* 4 & 5 W. c. 18. s. 2.

Unless the judge shall certify] E. 13 G. 2. *K.* and *Woodfall.* Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for costs on this statute, which provides, that in cases where the defendant is acquitted, the court is authorized to award costs to the defendant; unless the judge shall at the trial certify there was a reasonable cause. In this case, no such

certificate

certificate was asked; but it was insisted on for the prosecutor, that it was discretionary in the court. The chief justice certified *ore tenus*, that it was a verdict against evidence; but then he and all the others held, that it was now too late to inquire into the probable cause; and that it was not discretionary, but compulsory upon them, where there was no certificate. So the defendant had his costs. *Str.* 1131.

Costs against the defendant.

26. But it seems to be in a great measure settled, that an *informer* upon a popular statute shall in no case whatsoever have his costs, unless they be expressly given him by such statute; for it is certain, that he cannot recover them by the common law, for that doth not give costs in any case: neither can he recover them by the statute of *Gloucester*, which gives the demandant his costs in all cases wherein he shall recover his damages; for this seems to suppose some damage to have been done to the demandant in particular, which cannot be said in any popular action. But it seems agreed, that an action on a statute *by the party grieved*, for a certain penalty given by such statute, is within the statute of *Gloucester*, because such penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of costs, it would be in most cases in vain for him to sue for it, since the costs of suit would exceed it. But it is said, that no costs shall be recovered in an action on a statute, which gives no *certain* penalty to the party grieved, but only his *damages* in general, if such a statute be introductive of a new law, and give a remedy in a point not remediable at the common law; but there is not that inconvenience in this case, as in the former; because no certain sum being specified, the jury may give the plaintiff a full satisfaction by way of damages. 2 *Haw.* 274.

Informer compounding.

27. *No* (common) *informer shall compound or agree with the defendant, but after answer made in court, nor after answer, but by the order or consent of the court; on pain of being set in the pillory, in some market town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting* 10 l. *half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the justices of assize, and justices of the peace in sessions, may hear and determine all offences against this act.* 18 El. c. 5. s. 4.

Collusive action.

28. And *if the defendant plead a recovery by a former action, which former action shall be found to have been collusive; the plaintiff shall recover, as tho' no such action before had been had: and if the defendant shall be convicted of such collusion, he shall be imprisoned two years, by process of* capias *and outlawry, and that as well at the king's suit, as of every other that will sue.* 4 H. 7. c. 20.

And no release of any common person, to any such party, whether before or after any action popular, or indictment of the same commenced or made, hanging the same action, shall be available to surcease the said action, indictment, process, or execution. id.

Information not quashed upon motion.

29. *M.* 7 *G.* 2. *K.* and *Jocamb.* The court held, that a *qui tam* information is not to be quashed upon motion. The same having been often refused before. *Str.* 185, 953.

Form

Form of an information *qui tam*.

Westmorland. BE *it remembered, that* A. I. *of* ——— *in the county of* ——— *gentleman, who as well for our lord the now king, as for himself doth prosecute, cometh before the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter sessions of the peace holden at* ——— *in and for the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *in his proper person; and as well for the same lord the king, as for himself, giveth the court here to understand and be informed, That* A. O. *late of* ——— *in the county aforesaid, yeoman, on the* ——— *day of* ——— *in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, not regarding the laws and statutes of our said lord the king, but intending to* ——— *with force and arms* [Here insert the offence, with the same precision as in an indictment] *against the form of the statute in that case made and provided: Whereupon the aforesaid* A. I. *as well for the said lord the king, as for himself, prayeth the advice of this court in the premisses; and that the aforesaid* A. O. *may forfeit the sum of* ——— *according to the form of the statute aforesaid; and that he the same* A. I. *may have one moiety thereof, according to the form of the statute aforesaid; and also that the aforesaid* A. O. *may come here into this court, to answer concerning the premisses; and there are pledges of prosecuting,* John Doe *and* Richard Roe. *And hereupon it is commanded to the said* A. O. *that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to our said lord the king, as to the said* A. I. *who as well for the said lord the king, as for himself, doth prosecute, of and concerning the premisses, and further to do and receive what the said court shall consider in this behalf.*

Ingrossing. See Forestalling.

Inmates. See Cottages.

Inns, Innkeepers. See Alehouses.

Insolvent debtors. See Debtors.

Inrollment.

NO manors, lands, tenements, or hereditaments, shall pass from one to another, whereby any estate of inheritance or freehold shall be made or take any effect in any person, or any use thereof to be made by reason only of any bargain and sale thereof,

of, except the ſame bargain and ſale be made by writing indented, ſealed, and inrolled in one of the king's courts of record at *Weſtminſter*; or elſe within the county where the lands lie, before the *cuſtos rotulorum*, and two juſtices, and the clerk of the peace, or two of them at the leaſt, whereof the clerk of the peace to be one: The ſame inrollment to be made in ſix months after date of the writings: Paying, where the land exceeds not 40 *s.* a year, 2 *s.* to wit, 12 *d.* to the juſtices, and 12 *d.* to the clerk; and where it exceeds 40 *s.* a year, then paying 5 *s.* half to the juſtices, and half to the clerk: And the clerk of the peace ſhall inroll and ingroſs the ſame in parchment: The ſame to be kept amongſt the records of the county. 27 *H.* 8. *c.* 16.

In the counties of *Lancaſter*, *Cheſter*, and *Durham*, they may be inrolled in the reſpective courts there, or at the aſſizes. 5 *El. c.* 26.

The inrolling of deeds and wills of Papiſts, belongs to title Popery.

Journeymen. See Servants, and Apprentices.

Iſſues. See Eſtreats, Juroys.

Judgment.

1. OF judgments, ſome are fixed and ſtated; as in caſes of treaſon, felony, *præmunire*, and miſpriſions; the particular forms of which may be ſeen under their reſpective titles. Judgments certain.

2. Others are diſcretionary and variable, according to the different circumſtances of each caſe; Thus for crimes of an infamous nature, ſuch as petit larceny, perjury, or forgery at common law, groſs cheats, conſpiracy not requiring a villainous judgment, keeping a bawdy houſe, bribing witneſſes to ſtifle their evidence, and other offences of the like nature; it ſeems to be in a great meaſure left to the prudence of the court to inflict ſuch corporal puniſhment, and alſo ſuch fine, and binding to the good behaviour for a certain time, as ſhall ſeem moſt proper and adequate to the offence. 2 *Haw.* 445. Judgments variable.

3. The court may aſſeſs a fine, but cannot award any corporal puniſhment againſt a defendant, unleſs he be actually preſent in court. 2 *Haw.* 446. Judgment in the offender's abſence.

4. Where there are ſeveral defendants, a joint award of one fine againſt them all, is erroneous; for it ought to be ſeveral againſt each defendant; for otherwiſe, one who hath paid his proportionable part, might be continued in priſon till all the others have alſo paid theirs, which would be in effect to puniſh him for the offence of another. 2 *Haw.* 446. Judgment of a joint fine.

5. A fine

Judgment in mitigation of fines.

5. A fine is under the power of the court, during the term in which it is set; and may be mitigated as shall be thought proper: but after the term, it admits of no alteration. 2 *Haw.* 446.

Judgment against the verdict.

6. A judgment contrary to the verdict, is void. *Read. Judgm.*

Judgment by particular statutes.

7. By many statutes, peculiar punishments are appointed for several offences, as pillory, stocks, imprisonment and the like; and in all these cases, no room is left for the justices discretion, for they ought to give judgment, and to inflict the punishment in all the circumstances thereof, as such statutes do direct. *Dalt. c.* 188.

Jurors.

NOTE; The statutes of the 4 & 5 *W. c.* 24. and 7 & 8 *W. c.* 32. hereafter following, were at first but temporary; but are referred to, and as it were adopted by the 3 *G.* 2. *c.* 25. Which act of the 3 *G.* 2. *c.* 25. is made perpetual by the 6 *G.* 2. *c.* 37. And all the said three acts of 4 & 5 *W.* 7 & 8 *W.* and 3 *G.* 2. are required to be read at every *Midsummer* sessions.

Trial by juries is the *Englishman*'s birth right, and is that happy way of trial, which notwithstanding all revolutions of times, hath been continued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of this state, and one of the pillars of it, both as to age and consequence. *Tr. p. pais* 3. *Dalt. c.* 186.

Concerning which, I will treat in the order following:

I. Who may or may not be jurors.

II. Of making and returning lists of jurors.

III. Of the sheriff's summoning and returning jurors.

IV. Of the challenge of jurors.

V. Of the demeanor of jurors in giving their verdict.

VI. Of the indemnity and punishment of jurors.

I. Who may or may not be jurors.

Qualification of grand jurymen.

1. Mr. *Hawkins* says, it doth not seem to be any where holden, that none but freeholders ought to be returned on a grand jury. 2 *Haw.* 216, 217.

But

But in another place he says, that by the common law, every grand juryman ought to be a freeman. 1 *Haw.* 215.

And L. *Hale* says, touching the yearly value of the estate of a grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 *H. H.* 155.

But in *Yorkshire*, they are to have 80 *l.* a year, freehold or copyhold. 7 & 8 *W. c.* 32. *f.* 8.

Also a grand juryman must be a lawful liege subject; and consequently, neither under an attainder of any treason or felony, nor an alien, nor outlawed, whether for a criminal matter, or as some say, in a personal action; and from hence it seems, that any one who is under a prosecution for any crime, may by the common law, before he is indicted, challenge any of the persons returned on the grand jury, for the defect of any of the qualifications aboveſaid. 1 *Haw.* 215.

Jurymen in the courts at Westminster.

2. In the courts at *Westminster*, and city of *London*, the jurors shall be housholders within the city, and have lands, tenements, or personal estate, to the value of 100 *l.* 3 *G.* 2. *c.* 25. *f.* 19, 20.

And by the 4 *G.* 2. *c.* 7. *f.* 3. Leaseholders in the county of *Middlesex*, where the improved rents amount to 50 *l.* a year, shall be liable to serve on juries.

At the assizes or sessions.

3. At the assizes or sessions in the country, every juror, other than strangers *per medietatem linguæ* in *England*, shall have in his own name, or in trust for him, within the county, 10 *l.* a year, and in *Wales* 6 *l.* a year, above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, or in all or any of them, in fee simple, fee tail, or for the life of themselves, or some other person: and if any of a lesser estate be returned, he may be discharged upon challenge, or on his own oath. 4 & 5 *W. c.* 24. *f.* 15. 3 *G.* 2. *c.* 25. *f.* 20.

And by the 3 *G.* 2. *c.* 25. *f.* 18. Persons having an estate in possession in land in their own right, of 20 *l.* a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, shall be liable to serve on juries.

From hence it appears, that lands *freehold, copyhold, antient demesne*, or *leasehold*, do render persons liable to serve on juries. And some have thought that all lands are included under these denominations. And in *Coke's copyholder*, *p.* 14. it is said, that what land soever is not copyhold, is freehold. And in *Calthr.* 41. it is said, that copyhold lands may differ in name, but not in nature; for altho' copyhold lands be specially so called, because holden by copy of court roll, and customary lands by some special custom; yet they are all holden in one general kind, that is, by custom, and the diversity of their names doth not alter the nature of their tenure. Nevertheless, altho' all copyhold lands are customary, yet all customary lands are not copyhold, and consequently, as such, do not qualify a man to serve on juries. Of which kind of customary lands, not being copyhold, the greater part of the county of *Westmorland* in particular doth consist. For which cause (and by reason of the number of persons disqualified

by being quakers) the jurors in that county are in compariſon but few. To remedy which inconvenience, it ſeemeth not unreaſonable, that in the ſtatutes limiting the qualification of jurors, amongſt other denominations of tenure, the word *cuſtomary* ſhould be inſerted; for why ſhould a copyholder of 10*l.* a year be obliged to ſerve, and a cuſtomary tenant of 100*l.* a year be exempted?

Jurors on trials of foreigners.

4. As to the ſtrangers *per medietatem linguæ* abovementioned, it is enacted by the 28 *Ed.* 3. *c.* 13. that in inqueſts to be taken amongſt aliens and denizens, before any judges, one half of the inqueſt ſhall be denizens, and the other half aliens, if ſo many there be in the place who are not parties; if not, then ſo many as there are.

And by the 27 *Ed.* 3. *ſt.* 2. *c.* 8. Before the mayor of the ſtaple, if both parties be ſtrangers, the inqueſt ſhall be taken by ſtrangers; if both be denizens, by denizens; if one party be denizen, and the other alien, half of the jury ſhall be denizens, and half aliens.

And theſe aliens need not have any qualification by their eſtate. 8 *H.* 6. *c.* 29.

But it ſeems that the *Engliſh* half of the jury ought to have eſtates of the ſame value as in other caſes. 2 *Hawk.* 419.

But by the 13 & 14 *C.* 2. *c.* 11. *ſ.* 11. In actions concerning tonnage and poundage, or ſhips or goods to be forfeited by reaſon of unlawful importation or exportation, there ſhall not be any party jury, but ſuch only as are natural born ſubjects.

Jurors in towns corporate.

5. In towns corporate: Trials of felons ſhall be by men worth 40*l.* in goods, tho' they have no freehold. 23 *H.* 8. *c.* 13.

And in 3 *Salk.* 81. it is ſaid, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the ſtatutes which require jurors to be of ſuch and ſuch ſufficiency, do generally exempt cities, boroughs, and towns corporate.

In the torn.

6. In the torn: Jurors ſhall have 20*s.* a year freehold; or 26*s.* 8*d.* copyhold. 1 *R.* 3. *c.* 4.

In the leet.

7. In the leet: It is ſaid by ſome books, that any perſon happening to be preſent at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the ſteward to be ſworn, whether he be reſident within the precincts of the leet, or not: by which it ſeems to be implied, that any perſon whatſoever is capable of being put upon the jury in a court leet. 2 *Hawk.* 69.

On the coroner's inqueſt.

8. The coroner's jury, upon inqueſts taken before him, are to be of the neighbouring towns; but no qualification by eſtate is required by any ſtatute. 2 *H. H.* 152.

On other jurors concealing preſentments.

9. Jurors to inquire of the concealments of other inqueſts, ſhall have lands of 40*s.* a year. 3 *H.* 7. *c.* 1.

On inquiries of forcible entry.

10. Jurors to inquire of forcible entry or detainer, ſhall have lands or tenements of 40*s.* a year. 8 *H.* 6. *c.* 9.

On inquiries of riots.

11. Jurors to inquire of riots, ſhall have 20*s.* a year, charter land, or freehold; or 26*s.* 8*d.* copyhold. 19 *H.* 7. *c.* 13.

In Yorkſhire.

12. In *Yorkſhire:* No perſon having 150*l.* a year, of ſuch eſtate as will qualify him to ſerve on juries, ſhall be ſummoned to

the

the seſſions; but only perſons leſs able to bear the expence of attending the aſſizes. 1 *An. ſt.* 2. *c.* 13. *ſ.* 3. And if he doth ſerve at the ſeſſions, it ſhall not ſatisfy his turn, but he ſhall attend the aſſizes nevertheleſs. 10 *An. c.* 14. *ſ.* 6.

13. Young men, under 21 years of age, ſhall not ſerve upon juries. 7 *W. c.* 32. *ſ.* 4. Perſons under age.

14. Old men above 70, perſons continually ſick, or being diſeaſed at the time of the ſummons, or not dwelling in the county, ſhall not be put in juries of petit aſſizes; on pain of the ſheriff paying damages to the party grieved, and being amerced to the king. 13 *Ed.* 1. *ſt.* 1. *c.* 38. Perſons above age, infirm, abſent.

And the equity of this ſtatute, and alſo the reaſon of the thing, ſeem plainly ſo far to extend to grand juries, that if it ſhall appear, that any of the perſons abovementioned be returned on a grand jury, the court will eaſily excuſe their non-appearance. But it ſeems clear, that any ſuch perſons being returned on a grand jury, may lawfully ſerve upon it if they think fit. 2 *Haw.* 216.

15. The jury ought to be men; yet there ſhall be a jury of women, to try if a woman be enſient, upon the writ *de ventre inſpiciendo*. *Tr. p. pais* 86. In what caſe women ſhall be jurors.

16. Apothecaries, within *London* and ſeven miles thereof, being free of the company; and country apothecaries, who have ſerved ſeven years apprenticeſhip,—ſhall be exempted from ſerving on juries, and their return ſhall be void, unleſs they ſhall voluntarily conſent to ſerve. 6 & 7 *W. c.* 4. Apothecaries exempted.

17. Clergymen cannot be impanelled upon juries. *Lamb.* 396. Clergymen.

18. Diſſenting teachers, qualified under the toleration act, are exempted from ſerving on juries. 1 *W. c.* 18. *ſ.* 11. Diſſenting teachers.

19. Alſo quakers. 7 & 8 *W. c.* 34. *ſ.* 6. Quakers.

20. By the 4 & 5 *W. c.* 24. *ſ.* 21. No writ *de non ponendis in aſſiſis & juratis*, ſhall be granted, unleſs upon oath made, that the ſuggeſtions upon which it is granted, are true. Writs of exemption.

And the jurors ought to come in perſon and claim their privilege; for the ſheriff cannot return it. *Tr. p. pais* 87.

II. Of making and returning liſts of jurors.

1. The juſtices at *Midſummer* ſeſſions, ſhall iſſue forth their warrants (A) under the hands and ſeals of two or more of them, to the high conſtables, requiring them to iſſue forth their precept to the petty conſtables, thereby directing and requiring them to make and return true liſts in writing, of the names and places of abode, of all perſons within their reſpective conſtablewicks, qualified to ſerve on juries, with their titles and additions, between the ages of 21 and 70. High conſtable failing to iſſue his precept, ſhall forfeit 10*l.* on conviction at the aſſizes or ſeſſions. 7 & 8 *W. c.* 32. *ſ.* 4. 8 & 9 *W. c.* 10. 3 & 4 *An. c.* 18. *ſ.* 5. Precepts to the high and petty conſtables.

2. The petty conſtables, on requeſt to any pariſh officer who ſhall have in his cuſtody any of the rates for the poor or land tax, ſhall have free liberty to inſpect ſuch rates, and take from thence the names of freeholders, copyholders, or other perſons qualified Petty conſtables may inſpect the rates.

to ſerve on juries, dwelling within their reſpective precincts. 3 *G.* 2. *c.* 25. *ſ.* 1.

Liſts to be put up on the church door.

3. And ſhall yearly, 20 days at leaſt before *Michaelmas*, upon two or more *Sundays*, fix on the door of the church, chapel, and every other publick place of religious worſhip, an exact liſt of perſons intended to be returned; and ſhall leave at the ſame time a duplicate thereof, with a churchwarden or overſeer, to be peruſed by the pariſhioners without fee, to the end that notice may be given of perſons qualified who are omitted, or of perſons inſerted by miſtake who ought to be omitted. 3 *G.* 2. *c.* 25. *ſ.* 1.

Penalty on the petty conſtable, for inſerting perſons wrongfully.

4. And if ſuch petty conſtable ſhall wilfully omit any perſon who ought to be inſerted, or inſert any one who ought to be omitted, or ſhall take any reward for omitting or inſerting any perſon; he ſhall forfeit 20*s.* on conviction before one juſtice, on confeſſion, or oath of one witneſs; half to the informer, and half to the poor of the pariſh or place, for which the liſt is returned: if not paid in five days, to be levied by diſtreſs. And ſuch juſtice ſhall, in writing under his hand, certify the ſame to the next ſeſſions; who ſhall direct the clerk of the peace to inſert or ſtrike out the name of ſuch perſon ſo inſerted or omitted wrongfully. 3 *G.* 2. *c.* 25. *ſ.* 2.

Liſts to be delivered in at the ſeſſions.

5. The ſaid petty conſtables, at *Michaelmas* ſeſſions, ſhall deliver-in the liſts in open court. 7 & 8 *W.* *c.* 32. *ſ.* 4

Or, inſtead of this, after they have compleated their liſts, it ſhall be ſufficient if they ſubſcribe the ſame in the preſence of one juſtice, and at the ſame time atteſt the truth thereof upon oath to the beſt of their knowledge or belief: And then the ſaid liſts, being firſt ſigned by the juſtice, and ſubſcribed as aforeſaid, ſhall be delivered by the ſaid petty conſtables to the high conſtables, who ſhall deliver-in the ſame at the ſaid ſeſſions in open court, atteſting at the ſame time upon oath their receipt of ſuch liſts from the petty conſtables, and that no alteration hath been made therein ſince their receipt thereof. 3 *G.* 2. *c.* 25. *ſ.* 7.

Penalty on petty conſtables for not returning liſts.

6. The conſtable failing to make return, ſhall forfeit 5 *l.* to the king, to be recovered by bill, plaint, or information. 7 & 8 *W.* *c.* 32. *ſ.* 4.

Perſons not qualified, how diſcharged.

7. And if any perſon, not qualified, ſhall find his name mentioned in ſuch liſt, and the perſon required to make ſuch liſt ſhall refuſe to omit him, or think it doubtful whether he ought to be omitted; the juſtices at the ſeſſions to which the liſts ſhall be returned, on ſatisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be ſtruck out, or omitted to be entred in the book. 3 *G.* 2. *c.* 25. *ſ.* 1.

Liſts to be entred by the clerk of the peace;

8. The juſtices ſhall then cauſe the liſts to be fairly entred in a book by the clerk of the peace, to be by him provided and kept for that purpoſe amongſt the records of the ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 4.

on pain of 20*l.*

9. Clerk of the peace neglecting his duty herein, ſhall forfeit 20 *l.* to him who ſhall ſue by indictment at the ſeſſions. 3 *G.* 2. *c.* 25. *ſ.* 2. (*Quære*, Whether he may be compelled to draw the indictment?)

10. Duplicates

10. Duplicates of the said lists, when delivered in at the sessions, and entred in such book to be kept by the clerk of the peace for that purpose, shall during the said sessions, or within ten days after, be delivered by the clerk of the peace to the sheriff. 3 *G.* 2. *c.* 25. *s.* 2. Duplicates thereof to be delivered to the sheriff.

11. And the sheriff shall immediately take care, that the names shall be entred alphabetically, with their additions and places of abode, in a book to be kept by him for that purpose. 3 *G.* 2. *c.* 25. *s.* 2. The same to be entred by the sheriff.

12. And if the sheriff shall summon and return any person to the assizes, whose name is not in the duplicates; the judge may, on examination in a summary way, fine him not exceeding 10*l.* nor less than 40*s.* 3 *G.* 2. *c.* 25. *s.* 3. Sheriff shall return none but those in the duplicates.

III. Of the sheriff's summoning and returning jurors.

1. By a clause in the commission of the peace, it is said,—— We command our sheriff, that at certain days, which you (the justices) shall make known to him, he cause to come before you, so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth shall be the better known and inquired into. Sheriff to summon jurors to the sessions.

2. It seems that justices of the peace may not order a jury to be returned immediately, nor on the same day, for the trial of a prisoner arraigned before them, as justices of gaol delivery may, unless the crime amount to felony, or the party consent to be tried immediately. 2 *Haw.* 406. Whether the sessions may order a jury to be returned immediately.

3. Also it seems that a jury may not regularly be returned before justices of the peace in their sessions, by a bare award of the court, as before justices of gaol delivery; but that there ought to be a particular precept to the sheriff for that purpose. 2 *Haw.* 405, 406. Whether by award of the court without precept.

4. But in cases of felony, it is agreed (4 *Inst.* 164.) and is the usual practice, after the prisoners are arraigned and have pleaded to the country, for the justices to issue a precept to the sheriff, in nature of a *venire facias*, which may bear teste the same day that the prisoners plead, commanding the sheriff to return 24 jurors, to try the issue upon such a day; or they may make it returnable the same day that the prisoner pleads, as at one of the clock in the afternoon, or the like: and this precept must be in the name, and under the seals of the justices, or two of them (1 Q.) and not barely by an award upon the roll. 2 *H. H.* 261, 262. How they may do the same in cases of felony.

5. The writ of *venire facias* by the statute of the 4 & 5 *W.* *c.* 24. shall be after this form: *The king* &c. *We command* &c. *that you cause to come before* &c. *twelve free and lawful men of the vicinage of* A. *every of whom shall have* 10*l.* *of land, tenements, or rents, by the year, at least; by whom* &c. *and who neither* &c. *s.* 15. (B) Form of the venire facias.

6. The reason why they are required to come from the vicinage is, for that the neighbours are presumed to know what is done in the neighbourhood. 1 *Inst.* 158. Why the jurors shall be returned of the neighbourhood.

But yet this is not neceſſarily required; for they of one ſide of the county, are by law of the neighbourhood, to try an offence of the other ſide of the county. 2 *H. H.* 264.

And by the 4 *An. c.* 16. *ſ.* 6, 7. and 24 *G.* 2. *c.* 18. *ſ.* 3. to prevent challenges for default of hundredors, every *venire facias* for the trial of an iſſue in any action in the courts at *Weſtminſter*, or in an action or information on a penal ſtatute, ſhall be awarded of the body of the county where ſuch iſſue is triable.

How many ſhall be returned and ſerve.

7. And altho' the words of the writ be twelve, yet by the ancient courſe, the ſheriff muſt return 24, for the expedition of juſtice; for if 12 only ſhould be returned, a man would ſeldom have a full jury appear; and in this caſe uſage and cuſtom makes the law. 2 *H. H.* 263. *Read. Jur.*

But the general precept that iſſues before a ſeſſions is, to return 24; and commonly the ſheriff returns upon that precept 48. 2 *H. H.* 263.

But in iſſues of *niſi prius*, the ſheriff ſhall, upon his return of the writ of *venire facias juratores* (unleſs in cauſes intended to be tried at bar, or where a ſpecial jury ſhall be appointed) annex a panel to the ſaid writ, containing the chriſtian and ſurname, additions, and places of abode, of a competent number of jurors, the names of the ſame perſons to be inſerted in the panel annexed to every *venire facias*, for the trial of all iſſues at the ſame aſſizes; which number of jurors ſhall be not leſs than 48 in any county, nor more than 72, unleſs the judges ſhall order otherwiſe. And the writs of *habeas corpora juratorum*, or *diſtringas*, ſubſequent to ſuch writ of *venire facias juratores*, need not have inſerted in the bodies of ſuch writs the names of all the perſons contained in ſuch panel, but it ſhall be ſufficient to infert in the mandatory parts of ſuch writs reſpectively, *the ſeveral bodies of the perſons named in the panel annexed to this writ*, or words of the like import, and to annex to ſuch writs reſpectively panels, containing the ſame names as were returned in the panel to ſuch *venire facias*, with their additions and places of abode, that the parties concerned in any ſuch trials may have timely notice of the jurors who are to ſerve at the next aſſizes, in order to make their challenges to them, if there be cauſe; and the perſons named in ſuch panels ſhall be ſummoned at the next aſſizes, and no other. 3 *G.* 2. *c.* 25. *ſ.* 8. It is true, this gives them an opportunity of knowing how to make their challenges; but it alſo gives them an opportunity to another purpoſe, namely, of labouring the jurors,——a practice which cannot be too much diſcouraged.

In *Wales*; The ſheriff ſhall ſummon out of every hundred or commote, not leſs than ten, nor more than fifteen; unleſs the judges ſhall order otherwiſe. 3 *G.* 2. *c.* 25. *ſ.* 9.

And in the counties palatine; The ſheriff ſhall ſummon not leſs than 48, nor more than 72 (unleſs the judges order otherwiſe); and ſhall eight days before the courts be held, cauſe a liſt to be made of the perſons ſummoned, which ſhall be hung up in the ſheriff's office, to be inſpected by any perſon. 3 *G.* 2. *c.* 25. *ſ.* 10.

Upon

Upon the grand jury; there may be, and usually are, more than 12: but if there be 12 assenting, tho' others dissent, it is not necessary for the rest to agree. 2 *H. H.* 161.

But upon a trial by a petit jury; it can be by no more nor less than 12, and all assenting to the verdict. 2 *H. H.* 161.

In the county of *York*; only one panel of 48 freeholders and copyholders, and no more, shall be returned to serve on the grand inquest at the assizes; and at the sessions, not above 40, either upon the grand inquest, or other service there. 7 & 8 *W. c.* 32. *s.* 8.

8. Every summons of jurors shall be made by the sheriff, his officer, or lawful deputy, six days before at the least (and in *Wales* eight days before, and in the counties *Palatine* 14 days before, 3 *G.* 2. *c.* 25. *s.* 9, 10.) shewing to every person so summoned the warrant under the seal of the office wherein they are appointed to serve; and if such juror be absent from the place of his habitation, notice of the summons shall be given by leaving a note in writing, under the hand of such officer, containing the contents thereof, at the dwelling house of such juror, with some person there inhabiting in the same. 7 & 8 *W. c.* 32. *s.* 5. Time and manner of summons.

9. If the sheriff, his deputy, or bailiff, neglect their duty herein, or excuse any person for favour or reward; he shall forfeit 20*l.* to him who shall sue. 7 & 8 *W. c.* 32. *s.* 6. Or, he may be fined 10*l.* or under, by the judge of assize. 3 *G.* 2. *c.* 25. *s.* 6. Penalty on the sheriff or bailiff neglecting.

And no bailiff, or other officer, shall summon any person, other than such whose name is specified in a mandate signed by the sheriff or under sheriff, and directed to such bailiff or other officer; on pain of 10*l.* on a summary conviction before the judge of assize. 3 *G.* 2. *c.* 25. *s.* 6.

10. No persons shall be returned as jurors at the assizes; who have served within one year before in the county of *Rutland*, or two years before in any other county (not being a county of a city or town, and except the counties of *York*, and of *Middlesex*); on pain that the sheriff, on examination and proof in a summary way, shall be fined by the judge not exceeding 5*l.* 3 *G.* 2. *c.* 25. *s.* 4. How often they shall be summoned and serve.

And the sheriff shall enter in a book, the names of such persons as shall be summoned and shall serve at the assizes, with their additions and places of abode alphabetically, and the times of their services; and every person who hath served, shall (on application by him made to the sheriff) have a certificate *gratis*, testifying his attendance: and the said book shall be transmitted to the succeeding sheriff. 3 *G.* 2. *c.* 25. *s.* 5.

In the county of *York*; They shall not be returned above once in four years, at the assizes or sessions. 7 & 8 *W. c.* 32. *s.* 7. 10 *An. c.* 14. *s.* 5.

And if the sheriff of the county of *York*, neglect to keep such book as above, or to enter the names, or to deliver over to his successor the entries made for four years next before, or to deliver the certificate *gratis*; he shall forfeit 100*l.* half to the king, and half to him that shall sue. 3 & 4 *An. c.* 18. *s.* 3.

And if he ſhall ſummon or return any juror, who ſhall have ſerved within four years, and ſhall not on producing the certificate diſcharge the ſummons or return, and thereof give notice to the party ſummoned, ſix days before the aſſizes or ſeſſions; he ſhall forfeit 20*l.* to the party, with full coſts. 3 & 4 *An. c.* 18. *ſ.* 4.

In the county of *Middleſex:* No perſon ſhall be returned to ſerve as a juror, at any ſeſſions of *niſi prius*, who hath been returned at the two terms or vacations next before; on pain of the ſheriff being fined by the judge 5*l.* or under. 4 *G.* 2. *c.* 7. *ſ.* 2.

And by the 7 & 8 *W. c.* 32. *ſ.* 9. The inhabitants of the city and liberty of *Weſtminſter*, ſhall be exempted from ſerving in any jury at the ſeſſions for *Middleſex*, by reaſon of their attendance at the courts of *Weſtminſter-hall.*

Jury of view. 11. In any actions brought in the courts at *Weſtminſter*, where it ſhall appear to the court, that it is neceſſary that the jurors ſhould have the view of the place in queſtion, they may order ſpecial writs of *diſtringas* or *habeas corpora* to iſſue, by which the ſheriff ſhall be commanded, to have ſix out of the firſt 12 of the jurors, or ſome greater number of them, at the place in queſtion ſome convenient time before the trial; who ſhall have the matters in queſtion ſhewn to them by two perſons in the ſaid writs named; and the ſheriff by a ſpecial return upon the ſame, ſhall certify that the view hath been had according to the command of the ſaid writ. 4 *An. c.* 16. *ſ.* 8.

And by the 3 *G.* 2. *c.* 25. *ſ.* 14. Where a view ſhall be allowed, ſix or more of the jurors in the panel, who ſhall be conſented to by the parties on both ſides, or their agents, or if they cannot agree, by the proper officer or judges of the court,—— ſhall have the view, and ſhall be firſt ſworn, or ſuch of them as appear, before any drawing, and others ſhall be drawn to make up the number.

Special jury. 12. *Tr.* 8 *W.* A rule was made, that when the maſter is to ſtrike a jury, *viz.* 48 out of the freeholders book, he ſhall give notice to the attornies of both ſides to be preſent; and if the one comes, and the other does not, he that appears ſhall according to the ancient courſe ſtrike out 12, and the maſter ſhall ſtrike out other 12 for him that is abſent. 1 *Salk.* 405.

But if by rule of court, the maſter is ordered to ſtrike a jury, in caſe it be not expreſſed in ſuch rule, that the maſter ſhall ſtrike 48, and each of the parties ſhall ſtrike out 12; the maſter is to ſtrike 24, and the parties have no liberty to ſtrike out any. 1 *Salk.* 405. *M.* 8. *W.*

And the party who ſhall apply for a ſpecial jury to be ſtruck, ſhall pay the fees for the ſtriking ſuch jury, and ſhall not be allowed the ſame on taxation. 3 *G.* 2. *c.* 25. *ſ.* 16. And alſo ſhall pay all the expences occaſioned by the trial of the cauſe, and ſhall have no other allowance for the ſame upon taxation of coſts, than he would be intitled to, if the cauſe had been tried by a common jury; unleſs the judge ſhall in open court certify upon the back of the record, that the ſame was a cauſe proper to be tried by a ſpecial jury. 24 *G.* 2. *c.* 18. *ſ.* 1.

And no person who shall serve upon a special jury, shall be allowed more than the sum which the judge shall think reasonable, not exceeding one guinea, except in causes wherein a view is directed. 24 *G.* 2. *c.* 18. *f.* 2.

13. Where a full jury at *nisi prius* (or on indictments, informations, or other actions on penal statutes, 4 & 5 *P.* & *M.* *c.* 7.) shall not appear, or shall be reduced below the number by challenge, the judges on request of the plaintiff (or defendant, 14 *El.* *c.* 9.) may command the sheriff to appoint so many other able persons of the county then present at the assizes, as shall make up a full jury; whose names shall be annexed to the panel. 35 *H.* 8. *c.* 6. *f.* 6. Tales.

And by the 4 & 5 *W.* *c.* 24. *f.* 18, 19. these tales-men *(tales de circumstantibus)* shall have each 5 *l.* year, of like estate as other jurors; in *Wales*, 3 *l.*

But by the 7 & 8 *W.* *c.* 32. *f.* 3. Tales-men in *nisi prius* shall be returned out of the other panels, returned to serve at the same assizes.

And the parties may have their challenges to the tales, as to other jurors. 35 *H.* 8. *c.* 6. *f.* 7.

And if such tales-men, after they be called, be present, and do not appear, or after appearance do wilfully withdraw themselves, the judges may fine them; which shall be levied as issues forfeited by jurors, for default of their appearance at common law, have been accustomed to be levied. 35 *H.* 8. *c.* 6. *f.* 9.

By the 4 & 5 *W.* *c.* 24. *f.* 20. No fee shall be taken by any sheriff, clerk of assize, or any other person, for the return of any tales, or upon the account of any tales returned; on pain of 10 *l.* half to the prosecutor, and half to the king.

14. No sheriff shall return any juror, without the addition of his dwelling, or some other addition by which he may be known; and no extract of issues shall be delivered out, without such addition; on pain of five marks to the king, and five marks to the party grieved; to be recovered in sessions, or elsewhere. 27 *El.* *c.* 7. Addition to be returned.

15. If the clerk of assize, or other officer, shall record the appearance of any person, who did not appear; he shall, on conviction before the judge of assize in a summary way, forfeit not exceeding 10 *l.* nor under 40 *s.* 3 *G.* 2. *c.* 25. *f.* 3. Penalty of recording persons who did not appear.

16. Last of all; The name of each person summoned to try the issues of *nisi prius*, with his addition and place of abode, shall be written in several and distinct pieces of parchment or paper, as near as may be of equal size, and delivered to the marshal by the under sheriff. And the same shall by the marshal be rolled up, all, as near as may be, in the same manner, and put together in a box or glass to be provided for that purpose. And when any cause shall be brought on to be tried, some indifferent person, by direction of the court, shall in open court draw out 12 of the said parchments or papers one after another. And if any of the persons, whose names shall be so drawn, shall not appear, or be challenged and set aside; then such further number, until 12 be drawn who shall appear, and after all causes Drawing jurors names for trial.

of challenge, shall be allowed as fair and indifferent. And the said 12 persons so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the cause. And the names of the persons so drawn and sworn, shall be kept apart by themselves in some other box or glass to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until such jury shall by consent of the parties, or leave of the court, be discharged. And then the same names shall be rolled up again, and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn. And so *toties quoties*, as long as any cause remains then to be tried. Provided, that if any cause shall be brought on to be tried, before the jury in any other cause shall have brought in their verdict, or be discharged; the court may order 12 of the residue of the said parchments or papers, to be drawn as aforesaid. 3 *G.* 2. *c.* 25. *s.* 11, 12.

IV. Of the challenge of jurors.

And herein,

i. Of the several kinds of challenge.
ii. When the challenge is to be taken.
iii. How the challenge shall be tried.
iv. How panels may be reformed by the court, without challenge.

i. Of the several kinds of challenge.

Two kinds of challenge.

There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it stands *arrayed* in the *panel*, or little square *pane* of parchment on which the jurors names are written: or to the *polls*, by which are meant the several particular persons or *heads* in the array. 1 *Inst.* 156, 158.

To the array:

1. Challenge to the *array*, is in respect of the partiality or default of the sheriff, coroner, or other officer that made the return: and this is two-fold;

Principal challenge to the array.

(1) Principal challenge to the array: which if it is made good, is a sufficient cause of exception, without leaving any thing to the judgment of the triers.

Causes of challenge of this sort, are such as these: If the sheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintiff or defendant, the whole array shall be quashed. If the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So if the plaintiff or defendant have an action of debt against the sheriff; but otherwise it is, if the sheriff have an action of debt against either party. Or if the sheriff have parcel of the land

depending upon the same title. Or if the sheriff, or his bailiff which returned the jury, be under the distress of either party. Or if the sheriff, or his bailiff, be either of counsel, attorney, officer, or servant of either party; gossip; or arbitrator in the same matter, and treated thereof. 1 *Inst.* 156.

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quashed: but now, by the 24 *G.* 2. *c.* 18. *s.* 4. No challenge shall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is party.

And the subject may challenge the array against the king; as in traverse of an office, he that traverseth may challenge the array: And so it is in case of life. 1 *Inst.* 156.

And where a subject may challenge the array, for unindifferency, there the king being a party may also challenge for the same cause. 1 *Inst.* 156.

The array challenged on both sides shall be quashed. 1 *Inst.* 156.

(2) Challenge to the array, for favour. He that taketh this must shew in certain the name of him that made it, and in whose time, and all in certainty. This kind of challenge, being no principal challenge, must be left to the discretion and conscience of the triers. As if the plaintiff or defendant be tenant to the sheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the son of the sheriff, and the daughter of the party, or the like, is no principal challege, but to the favour; but if the sheriff marry the daughter of either party, or the like, this (as hath been said) is a principal challenge. 1 *Inst.* 156. Challenge to the array for favour.

But where the king is party, one shall not challenge the array for favour; because in respect of his allegiance, he ought to favour the king more: but if the sheriff be a menial servant of the king, there the challenge is good. 1 *Inst.* 156. By which seems to be meant, that such challenge is not good, without shewing some actual partiality in the sheriff. 2 *Haw.* 419.

But the king may challenge the array for favour. 1 *Inst.* 156.

2. Challenge to the *polls* is threefold: To the polls:

(1) Peremptory. This is so called, because a person may challenge peremptorily, upon his own dislike, without shewing of any cause. Peremptory challenge to the polls.

This peremptory challenge shall not be allowed to the king; for it is provided by the 33 *Ed.* 1. *st.* 4. that he who challengeth a juror for the king, shall shew cause, and the truth thereof shall be inquired of. And this extends as well to criminal, as civil causes. However, if the king challenge a juror, he needs not shew any cause of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the person challenged. And if the defendant, in order to oblige the king to shew cause, presently challenge all the rest, yet it hath been adjudged, that the defendant shall be first put to shew all his causes of challenge, before the king need to shew any. 2 *Haw.* 413.

And

And this peremptory challenge is not allowable to the party againſt the king, but only in caſe of treaſon or felony, in favour of life. 1 *Inſt.* 156.

But in caſe of treaſon or felony, the priſoner by the common law might peremptorily challenge 35, which was under the number of three juries; but by the ſtatute of the 22 *H.* 8. *c.* 14. *ſ.* 6. the number is reduced to 20, in petit treaſon, murder, and felony; and in caſe of high treaſon, and miſpriſion of high treaſon, it was taken away by the ſtatute of the 33 *H.* 8. *c.* 23. but by the ſtatute of the 1 *&* 2 *P. & M. c.* 10. the common law was again revived for *any* treaſon, and therein the priſoner ſhall have his peremptory challenge to the number of 35. 1 *Inſt.* 156.

But as to all murders and other felonies, the ſtatute of the 22 *H.* 8. *c.* 14. taking away the peremptory challenge of above 20 ſtands in force. 2 *H. H.* 269. But if the party challenge above that number, he ſhall not have judgment of death, but his challenge ſhall be overruled, and he ſhall be put upon his trial. *H. Pl.* 259. 2 *H. H.* 270.

Note; The aboveſaid ſtatute of the 1 *&* 2 *P. & M. c.* 10. by miſtake hath been omitted out of Mr. *Hawkins*'s edition of the ſtatutes.

Principal challenge to the polls.

(2) Principal challenge to the polls: where cauſe is ſhewn, but which if found true, ſtands ſufficient of itſelf, without leaving any thing to the triers.

Cauſes of principal challenge to the polls, are ſuch as theſe:

A peer is not to be ſworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his diſcharge. 1 *Inſt.* 156. 2 *Haw.* 415.

Want of freehold, is a good cauſe of challenge. 1 *Inſt.* 156.

Alſo, if a perſon is an alien. 1 *Inſt.* 156.

If the juror be within the age of 21, it is a good cauſe of challenge. 1 *Inſt.* 157.

If a juror is above the age of 70, or is ſick, or is non-reſident in the county, he may ſue out a writ of privilege for his diſcharge; but if he be returned and appear, he can neither be challenged by the party, nor excuſe himſelf from not ſerving, if there be not enow without him. 2 *Haw.* 418.

If the juror be of blood or kindred to either party, this is a principal challenge; for that the law preſumeth that one kinſman doth favour another, before a ſtranger; and how far remote ſoever he is of kindred, yet the challenge is good. 1 *Inſt.* 157.

Affinity, or alliance by marriage, is a principal challenge, if the ſame continues, or iſſue be had; otherwiſe, it is but to the favour. 1 *Inſt.* 157.

If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge in our books. 1 *Inſt.* 157.

If the juror have part of the land that dependeth upon the ſame title, it is a principal challenge. 1 *Inſt.* 157.

It hath been allowed a good cauſe of challenge, on the part of the priſoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. 2 *Haw.* 418.

Likewiſe if the juror gave a verdict before, for the ſame cauſe, or upon the ſame title or matter, tho' between other perſons. 1 *Inſt.* 157.

So likewiſe one may be challenged, that he was indictor of the plaintiff or defendant in the ſame cauſe; for ſuch a one, it may be thought, will not falſify his former oath. *Lamb.* 554. And if a grand juryman, who was one of the indictors in the ſame cauſe, be returned upon the petit jury, and do not challenge himſelf, he ſhall be fined. 2 *H. H.* 309.

If a juror hath been an arbitrator, choſen by the plaintiff or defendant in the ſame cauſe; and hath been informed thereof, or treated of the matter, this is a principal challenge; otherwiſe, if he were choſen indifferently by either of the parties. 1 *Inſt.* 157.

If he be of counſel, ſervant, or of fee, of either party, it is a principal challenge. 1 *Inſt.* 157.

Alſo, if a juryman, before he be ſworn, take information of the caſe, this is cauſe of challenge. 2 *H. H.* 306.

If any, after he be returned, do eat and drink at the charge of either party, it is a principal cauſe of challenge. 1 *Inſt.* 157.

But it is not a principal challenge to a juror, but only to the favour, that the proſecutor was lately entertained at his houſe, 3 *Salk.* 81.

Actions brought either by the juror againſt either of the parties, or by either of the parties againſt him, which imply malice or diſpleaſure, are cauſes of principal challenge; other actions, which do not imply malice or diſpleaſure, are but to the favour. 1 *Inſt* 157.

In a cauſe where the parſon of a pariſh is party, and the right of the church cometh in debate, a pariſhioner is a principal challenge. 1 *Inſt.* 157.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conſcience, this is no challenge at all, but lawful for him to do it. 1 *Inſt.* 157.

That the juror is a fellow ſervant with either party, is no principal challenge, but to the favour. 1 *Inſt.* 157.

If the juror be attainted or convicted of treaſon or felony, or for any offence to life or member, or in attaint for a falſe verdict, or for perjury as a witneſs, or in a conſpiracy at the ſuit of the king, or in any ſuit (either for the king or for any ſubject) be adjudged to the pillory, tumbrel, or the like, or to be branded or ſtigmatized, or to have any other corporal puniſhment, whereby he becometh infamous: theſe, and the like, are principal cauſes of challenge. 1 *Inſt.* 158.

So it is, if a man be outlawed in treſpaſs, debt, or any other action, for he is *exlex*, and therefore not a lawful man. 1 *Inſt.* 158,

And

And old books have said, that if he be excommunicated, he could not be of a jury. 1 *Inst.* 158.

Challenge to the polls for favour.

3. Challenge to the polls for favour. This is, when either party cannot take any principal challenge, but sheweth causes of favour, which must be left to the conscience and discretion of the triers, upon hearing their evidence, to find him favourable, or not favourable. And the causes of favour are infinite. For all which, the rule of law is, that he must stand indifferent, as he stands unsworn. 1 *Inst.* 157.

Challenge when to be taken.

ii. When the challenge is to be taken.

1. No challenge can be taken either to the array, or to the polls, till a full jury have appeared. 2 *Haw.* 412.

2. He that hath divers challenges, must take them all at once. 1 *Inst.* 158.

3. If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. 1 *Inst.* 158.

4. After challenge to the array, and trial duly returned, if the same party take a challenge to the polls, he must shew cause presently. 1 *Inst.* 158.

5. If a juror be formerly sworn, if he be challenged, the party must shew cause presently, and that cause must rise since he was sworn. 1 *Inst.* 158.

6. When the king is party, the defendant that challengeth for cause must shew his cause presently. 1 *Inst.* 158.

7. But if a juror be challenged between party and party, and there be enough of the panel besides; the cause of challenge needeth not to be shewed, unless the other side challenges *touts peravail. Tr. p. pais* 143.

8. If a man, in case of treason or felony, challenge for cause, and he be tried indifferent, yet he may challenge him peremptorily. 1 *Inst.* 158.

9. The prisoner must take all peremptory challenges himself, even in cases wherein he may have counsel. 2 *Haw.* 413.

10. The challenge to the array, must be in writing (C); but where the challenge is to the polls, it is a short way by a verbal challenge. *Tr. p. pais* 172.

Trial of challenges.

iii. How the challenges shall be tried.

1. The challenge of him who first challenged shall be first tried. *Tr. p. pais* 144.

2. If the array be challenged, it lies in the discretion of the court how it shall be tried; sometimes it is done by two coroners, and sometimes by two of the jury, with this difference, that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge found in favour of partialty, then by any other two assigned thereunto by the court. 2 *H. H.* 275.

3. When

3. When any challenge is made to the polls, if it be before any jurors are ſworn, the court ſhall chuſe the triers; if two are ſworn, they ſhall try; and if they try one indifferent, and he be ſworn, then he and the two triers ſhall try another; and if another be tried indifferent, and he be ſworn, then the two triers ceaſe, and the two that be ſworn on the jury ſhall try the reſt: If the plaintiff challenge ten, and the defendant one, and the twelfth is ſworn, becauſe one cannot try alone, there ſhall be added to him one challenged by the plaintiff, and another by the defendant. *Finch* 112. 1 *Inſt.* 158.

4. The triers oath is, "You ſhall well and truly try, whether "*A. B.* (the juryman challenged) ſtand indifferent between the "parties to this iſſue: ſo help you god." 1 *Salk.* 152.

5. If the cauſe of challenge touch the diſhonour or diſcredit of the juror, he ſhall not be examined on his oath; but in other caſes, he ſhall be examined on his oath, to inform the triers. 1 *Inſt.* 158. 1 *Salk.* 153.

6. If the array be quaſhed againſt the ſheriff, the proceſs of *venire facias juratores* ſhall be directed to the coroners; if againſt any of the coroners, then proceſs ſhall be awarded to the reſt; if againſt all of them, then the court ſhall appoint certain eliſors (ſo named *ab eligendo*), againſt whoſe return no challenge ſhall be taken to the array, becauſe they were appointed by the court; but he may have his challenge to the polls. 1 *Inſt.* 158.

iv. How panels may be reformed by the court without challenge.

Panels reformed by the court.

Beſides the challenges which may be taken by the plaintiff or defendant, it is enacted by the 3 *H.* 8. *c.* 12. that in caſes where the king is party, the juſtices of aſſize, or of the peace in ſeſſions, may reform the panels of jurors, by putting to and taking out of the names of the perſons impanelled by their diſcretion; and if the ſheriff do not return the panel ſo reformed, he ſhall forfeit 20 *l.* half to the king, and half to him that ſhall ſue.

And this extends both to grand and petit juries. 2 *H. H.* 156.

And hence it is, that if a priſoner be arraigned before the judge that ſits upon the crown ſide, it is uſual for the judge to ſend for a jury to the judge of *niſi prius*, and when the jury is brought, the ſheriff returns them between the king and the priſoner; which is by virtue of this ſtatute. 2 *H. H.* 265.

V. Of the demeanor of jurors in giving their verdict.

1. By the law of *England*, a jury after their evidence given upon the iſſue, ought to be kept together in ſome convenient place, without meat or drink, fire or candle, and without ſpeech with any, unleſs it be the bailiff, and with him only if they be agreed. 1 *Inſt.* 227.

Jurors to be kept without meat or drink.

2. And

Bailiff ſworn to keep them.

2. And the bailiff ought to be ſworn to keep them together, and not to ſuffer any to ſpeak with them. 2 *H. H.* 296.

Whether eating and drinking ſhall avoid the verdict.

3. And if the jury after their evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict, it is finable, but it ſhall not avoid the verdict; but if before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it ſhall avoid the verdict; but if it be given for the defendant, it ſhall not avoid it, and ſo on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do paſs, it ſhall not avoid the verdict. 1 *Inſt.* 227.

In what caſes they may eat or drink.

4. But with the aſſent of the juſtices they may both eat and drink; as if any of the jurors fall ſick before they be agreed of their verdict, then by the aſſent of the juſtices he may have meat or drink, and alſo ſuch other things as be neceſſary for him and his fellows alſo, at their own coſts, or at the indifferent coſts of the parties, if they ſo agree: and if they cannot agree, the juſtices may in ſuch caſe ſuffer the jury to have both meat and drink for a time, to ſee whether they will agree. *Dr. & St.* 158.

May re-examine witneſſes.

5. After their departure they may deſire to hear one of the witneſſes again, and it ſhall be granted, ſo he deliver his teſtimony in open court; and alſo they may deſire to propound queſtions to the court for their ſatisfaction, and it ſhall be granted, ſo it be in open court. 2 *H. H.* 296.

May hear no evidences but in court.

6. But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in iſſue, or any evidence, or any writing touching the matter in iſſue, which was not given in evidence, it ſhall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, and ſo on the contrary. But if the jury carry away any writing unſealed, which was given in evidence in open court, this ſhall not avoid their verdict, albeit they ſhould not have carried it with them. 1 *Inſt.* 227.

Cannot be diſcharged without giving a verdict.

7. A jury ſworn and charged in a capital caſe, cannot be diſcharged (without the priſoner's conſent) till they have given a verdict. 2 *Haw.* 439.

And the king cannot be nonſuit, for he is in judgment of law ever preſent in court. 1 *Inſt.* 227.

May be fined for ſaying they are agreed, when they are not.

8. If a jury ſay they are agreed, and it being aſked who ſhall ſay for them, they ſay their foreman, but upon farther inquiry they are not agreed, they may be fined. 2 *H. H.* 309.

Caſting lots for their verdict.

9. If the jury caſt lots for their verdict, it ſhall be ſet aſide, and they ſhall be fined for the contempt. 3 *Keb.* 805. 2 *Lev.* 140, 205. 2 *Jones* 83.

M. 12 *G. Hale* and *Cove.* The jury having ſat up all night, agreed in the morning to put two papers into a hat, marked *Plaintiff* and *Defendant*, and ſo draw lots; *Plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict muſt be ſet aſide; but the

the queſtion was, whether the defendant ſhould pay coſts: the court inclined to give the plaintiff coſts, comparing it to the caſe of a verdict againſt evidence; but at laſt it was agreed, that the coſts ſhould wait the event of the new trial. *Str.* 642.

10. The jury may give a verdict without teſtimony, when they themſelves have conuſance of the fact. *Tr. p. pais* 279. 1 *Ventr.* 97. Giving verdict without evidence.

11. But if they give a verdict on their own knowledge, they ought to tell the court ſo; but they may be ſworn as witneſſes; and the fair way is to tell the court before they are ſworn that they have evidence to give. 1 *Salk.* 405. Juror may be a witneſs.

For certainly it is of dangerous conſequence, to receive a verdict againſt evidence given, on ſuppoſal that ſome of the jury knew otherwiſe, or on private information given by any juryman to the reſt, where he cannot be croſs examined. *Tr. p. pais* 209.

12. After they be agreed, they may in cauſes between party and party, if the court be riſen, give a private verdict, before any of the judges of the court; and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court ſhall ſtand. 1 *Inſt.* 227. Private verdict.

But in criminal caſes of life or member, the jury can give no private verdict, but they muſt give it openly in court. 1 *Inſt.* 227.

13. In all cauſes, and in all actions, the jury may give either a general or a ſpecial verdict, as well in cauſes criminal as civil; and the court ought to receive a ſpecial verdict, if pertinent to the point in iſſue. 3 *Salk.* 373. Special verdict.

Thus if one be indicted for grand larceny, that is, for ſtealing goods above the value of 12 *d.* yet the jury may find ſpecially, that he is guilty, but that the goods are not above the value of 12 *d.* In which caſe, he ſhall only have judgment of petit larceny. 1 *Hawk.* 95. The value.

14. Jurors are to try the fact, and the judges ought to judge according to the law that ariſeth upon the fact. 1 *Inſt.* 226. Jurors to try not the law, but the fact.

But if they will take upon them the knowledge of the law upon the matter, they may; yet it is dangerous, for if they miſtake the law, they run into the danger of an attaint: therefore to find the ſpecial matter is the ſafeſt way, where the caſe is doubtful. 1 *Inſt.* 228.

But if the jury find according to the direction of the judge in matter of law, altho' the judge be miſtaken, yet the jury ſhall not be liable to attaint. L. *Raym.* 470.

15. It hath been adjudged, that if the jury acquit a priſoner of an indictment of felony againſt manifeſt evidence, the court may, before the verdict is recorded, but not after, order them to go out again, and re-conſider the matter; but this by many is thought hard, and ſeems not of late years to have been ſo frequently practiſed as formerly. However it is ſettled, that the court cannot ſet aſide a verdict which acquits a defendant, of a proſecution properly criminal, as it ſeems that they may a verdict that convicts him, for having been given contrary to evidence and the direc- Finding againſt evidence.

tions of the judge, or any verdict whatsoever for a mistrial. 2 *Haw.* 442.

Varying from the verdict.

16. After the verdict recorded, the jury cannot vary from it; but before it be recorded, they may vary from the first offer of their verdict, and that verdict which is recorded shall stand. 1 *Inst.* 227.

Verdict finding an impossibility.

17. A verdict finding an impossible matter shall not be void, if at the same time it find the substance of the indictment; but the surplus shall be rejected. 1 *Haw.* 77.

Verdict how far to be taken strictly.

18. Verdicts shall not be taken so strictly as pleadings; but the substance of the thing in issue ought to be always found. 3 *Salk.* 373.

Where they cannot agree.

19. It is said, that if the jurors agree not, before the departure of the justices of gaol delivery into another county, the sheriff must send them along in carts, and the judge may take and record their verdict in a foreign county. 2 *H. H.* 297. *Tr. p. pais* 274, 285. 1 *Ventr.* 97.

But if the case so happen, that the jury can in no wise agree, as if one of the jurors knoweth in his own conscience the thing to be false, which the other jurors affirm to be true, and so he will not agree with them in giving a false verdict, and this appeareth to the justices by examination; the justices (as it seemeth) in such case may take such order in the matter, as shall seem to them by their discretion to stand with reason and conscience, by awarding a new inquest, or otherwise, as they shall think best by their discretion, like as they may do, if one of the jury die before the verdict. *Dr. & Stud.* 158.

VI. Of the indemnity and punishment of jurors.

Threatning a juror.

1. If a man assault or threaten a juror, for giving a verdict against him, he is highly punishable by fine and imprisonment; and if he strike him in the court, in the presence of the judge of assize, he shall lose his hand, and his goods, and profits of his lands during life, and suffer perpetual imprisonment. 1 *Haw.* 57, 58.

Juror not appearing.

2. Where more than one of the persons returned on a jury do appear, but not a sufficient number to take an inquest, and some of the others come within view of the court, or into the same town in which the court is holden, but refuse to come into the court to be sworn; upon proof of such matter, the court may, at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of such defaulter's lands, and after such inquiry made, either summon them to appear, on pain of forfeiting such sum as their lands have been found to be worth by the year, or some lesser sum, or impose a fine of the like sum upon them, without any farther proceeding. But it seems, that such juror shall be liable to lose his issues only for such default, and not the yearly value of his lands, unless the party pray it: But a juror who hath actually appeared, and after makes default, is said to be subject to such forfeiture of the yearly value of his lands, whether the party pray it or not; because his contempt appears to the court by its own record: yet even in this case, the

court

court in discretion will sometimes only impose a small fine. Also it seems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to lose his issues, or to be amerced, but not to be fined. 2 *Haw.* 146.

And by the 3 *G.* 2. *c.* 25. *s.* 13. In causes of *nisi prius*, every person whose name shall be drawn, and who shall not appear, after being openly called three times, shall on oath made of his having been lawfully summoned, forfeit not exceeding 5 *l.* nor less than 40 *s.* unless some reasonable cause be proved, by oath or affidavit, to the satisfaction of the judge.

Whether a grand jury may be fined for not finding a bill.

3. If the grand jury at the assizes or sessions will not find a bill, the court may impanel another inquest (by the 3 *H.* 7. *c.* 1.) to inquire of their concealments, and thereupon set fines upon them: But it seemeth that fines set upon grand inquests in any other manner, are not warrantable by law; for the privilege of an *Englishman* is, that his life shall not be drawn in danger without due presentment or indictment, and this would be but a slender screen or safeguard, if every justice of the peace, or judge of assize, may make the grand jury present what he pleases, or otherwise fine them. 2 *H. H.* 160, 1.

Juror taking a bribe.

4. If any juror do take of either party to give his verdict, he shall on conviction by bill or plaint, before the court where the verdict shall pass, forfeit ten times as much as he hath taken, half to the king, and half to him that shall sue. 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. *c.* 8. 38 *Ed.* 3. *st.* 1. *c.* 12.

Whether a juror may be prosecuted for a verdict in a criminal matter.

5. It seems to be certain, that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a *criminal* matter, either upon a grand or petit jury; for since the safety of the innocent, and punishment of the guilty, doth so much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence, that they should be as little as possible under the influence of any passion whatsoever. And therefore, lest they should be biassed with the fear of being harassed by a vexatious suit, for acting according to their consciences, the law will not leave any possibility for a prosecution of this kind. And as to the objection, that an attaint lies against a jury for a false verdict in a civil cause, and that there is as much reason to allow of it in a criminal one; it may be answered, that in an attaint in a civil cause, a man's property is only brought into question a second time, and not his liberty or life. 1 *Haw.* 191. L. *Raym.* 469.

Attaint in a civil cause.

6. But where the jurors give a false verdict upon an issue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attaint in the king's bench or common pleas, upon which 24 of the best men of the county are to be jurors, who are to hear the same evidence which was given to the petit jury, and as much as can be brought in affirmance of the verdict, but no other against it. And if these 24, who are called the grand jury, find it a false verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party shall be infamous, so as never to be received to be a witness, or a juror; shall forfeit his goods and chattels; and his lands and tenements shall be taken into the king's hands; his wife and children

caſt out of doors; his houſes proſtrated; his trees rooted up; his meadows ploughed up; and his body impriſoned. And ſeeing all trials of real, perſonal, and mixt actions depend upon the oath of 12 men, prudent antiquity inflicted a ſtrange and ſevere puniſhment upon them, if they were attainted of perjury. 1 *Inſt.* 294. *Read. Jur.*

But now by the ſtatute of 23 *H.* 8. *c.* 3. The ſeverity of this puniſhment is moderated, if the writ of attaint be grounded upon that ſtatute; but nevertheleſs, the party grieved may at his election, either bring his writ of attaint upon that ſtatute, or at the common law. *Tr. per pais* 222.

But this proceeding ſeems to be intirely diſuſed at this day; and in the place of attaint motions are now uſually made for new trials, when a verdict is againſt evidence. *Wood* 1048. *Read. Jur.*

But there can be no new trial for or againſt the king. *Tr. per pais* 210.

Whether they may be fined for their verdict.

7. It ſeems to be the current opinion of the old books, that jurors are not ſubject to any proſecution for a falſe verdict except by way of attaint: And there ſeem to be very few antient precedents for the puniſhment either of a grand or petit jury, merely for giving a verdict againſt evidence, or the direction of the court, either in a capital or civil matter. 2 *Haw.* 147.

And the fining and impriſoning of jurors for giving their verdict, hath ſeveral times been declared in parliament an illegal and arbitrary innovation, and of dangerous conſequence to the government, and the lives and liberties of the ſubject. 2 *Keb.* 180. *Read. Jur.*

And in *Buſhel*'s caſe, it was reſolved by all the judges, upon a full conference together, that a jury is not finable for going againſt their evidence, where an attaint lies. And where an attaint doth not lie, L. *Vaughan* ſays thus; "That the court could not fine a "juryman at the common law, where attaint did not lie, I think "to be the cleareſt poſition that ever I conſidered, either for au- "thority, or reaſon of law." And one reaſon for this is, becauſe the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evidence, than what is ſhewed in court; they are of the vicinage, the judge is a ſtranger; they may have evidence from their own perſonal knowledge that the witneſſes ſpeak falſe, which the judge knows not of; they may know the witneſſes to be ſtigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and ſo the judge knew as much as they, yet they might make different concluſions, as oftentimes two judges do; and therefore as it would be a ſtrange and abſurd thing, to puniſh one judge for differing with another in opinion or judgment, ſo it would be worſe for the jury, who are judges of the fact, to be puniſhed for finding againſt the direction of him, who is not judge of the fact. *Tr. per pais* 225. L. *Vaugh.* 135.

And to ſay the truth, ſays Lord *Hale*, it would be the moſt unhappy caſe that could be to the judge, if he at his peril muſt take upon him the guilt or innocence of the priſoner: and if the judge's opinion

opinion muſt rule the matter of fact, the trial by jury would be uſeleſs. 2 *H. H.* 315.

But what if a jury give a verdict againſt all reaſon, convicting or acquitting a perſon indicted of felony, what ſhall be done? If the jury *convict* a man, againſt or without evidence, and againſt the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury *acquit* him in like manner, the court may ſend them back again (and ſo in the former caſe) to conſider better of it, before they record the verdict; but if they are peremptory in it, and ſtand to their verdict, the court muſt take their verdict and record it. 2 *H. H.* 309, 310.

A. Warrant for the returning liſts of jurors.

Weſtmorland. { To *Henry Holme*, gentleman, high conſtable of the Weſt Ward, within the county aforeſaid.

AT *the general quarter ſeſſions of the peace of our ſovereign lord the king, holden at* ——— *in and for the ſaid county, the* ——— *day of* July, *in the* ——— *year of the reign of our ſaid ſovereign lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before us* ——— *eſquires, and others our aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors, in the ſaid county committed:*

Theſe are to require you, upon ſight hereof, to iſſue forth your precepts to all the petty conſtables within your ſaid Ward, thereby directing and requiring them, to make and return true liſts of jurors, according to the form, or to the effect here following; that is to ſay,

Weſtmorland Weſt Ward. { To the conſtable of ———

BY *virtue of a warrant from his majeſty's juſtices of the peace in and for the ſaid county, at their general quarter ſeſſions aſſembled, unto me directed, you are hereby required to make a true liſt in writing, containing the names and places of abode, together with the titles and additions, of all perſons, between the ages if* 21 *and* 70, *dwelling within your conſtablewick, qualified to ſerve upon juries; that is to ſay, of every ſuch perſon who hath in his own name, or in truſt for him, within the county aforeſaid,* 10*l. a year above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of antient demeſne, or in rents, or in all or any of them, in fee ſimple, fee tail, or for the life of himſelf, or ſome other perſon; or having land in poſſeſſion in his own right of* 20*l. a year above the reſerved rent, being held by leaſe for* 500 *years or more, or for* 99 *years, or any other term determinable on one or more lives: In order to the making of which liſt, you may, if you think it needful, apply to any pariſh officer, who ſhall have in his cuſtody any of the rates for the poor or land tax, and from thence take the names of ſuch perſons ſo qualified. Which liſt ſo being made as aforeſaid, you*

are required, upon two or more Sundays, *at leaſt* 20 *days before* Michaelmas *next, to fix on the door of the church or chapel, and of every other publick place of religious worſhip within your pariſh or other precinct; and leave at the ſame time a duplicate thereof with a churchwarden or overſeer of the poor, to be peruſed by the pariſhioners* gratis. *And the ſaid liſt you are alſo further required to deliver in at the next general quarter ſeſſions of the peace, to be holden in and for the ſaid county, in open court; or otherwiſe, you may in the mean time apply to one of his majeſty's juſtices of the peace in and for the ſaid county, and in his preſence ſubſcribe the ſaid liſt, and atteſt the truth thereof upon oath; and the ſame (being firſt alſo ſigned by the ſaid juſtice) you may deliver to me, to be by me delivered in at the ſaid next general quarter ſeſſions. Given under my hand at* Barnſkew *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

Henry Holme, *High Conſtable.*

And this you the ſaid high conſtable are in no wiſe to omit, upon the peril that ſhall enſue thereof. Given under our hands and ſeals the day and year firſt above written.

B. The form of a writ to the ſheriff to ſummon jurors, for the trial of an iſſue joined.

GEORGE *the ſecond &c. To the Sheriff of* ——— *greeting. We command you, that you do not omit by reaſon of any liberty within your county, but that you enter therein, and cauſe to come before* ——— *twelve good and lawful men of the* vicinage of ——— *whereof every one hath ſuch lands, tenements, or rents, as will qualify them to ſerve upon juries, and who* are neither of affinity to ——— (the plaintiff) nor *to* ——— (the defendant); *to hear and do thoſe things, which on our behalf ſhall be then and there enjoined them: And have you then there this precept. Witneſs* A. B. *and* C. D. *at* ——— *the* ——— *day of* ——— 4 & 5 W. c. 24. ſ. 15.

Note; The general precept for ſummoning jurors to the ſeſſions, is contained in the precept for ſummoning the ſeſſions, in the title Seſſions.

C. Challenge to the array, becauſe the ſheriff is of kindred to one of the parties; from *Coke*'s entries.

AND *now at this day, to wit* ——— *came the aforeſaid* A. *the plaintiff, and* B. *the defendant, by their attornies, and the jurors were impanelled, and demanded, and came, and thereupon the aforeſaid* B. *challengeth the array of the panel aforeſaid, becauſe he ſaid that that panel was arrayed by one* John Zouch, *knight, now and at the time of making the array aforeſaid, ſheriff of the ſaid county of* Derby, *which ſaid ſheriff is a kinſman of the aforeſaid* John Maners *(the plaintiff); to wit, the ſon of* George Zouch, *eſquire, the ſon of* John Zouch, *knight, the ſon of* John Zouch,

Zouch, *esquire, the son of* William *Lord* Zouch, *the son of* Alan *Lord* Zouch, *the son of* William *Lord* Zouch, *the son of* Elizabeth *daughter of* William *Lord* Roos, *the father of* William *Lord* Roos, *the father of* Thomas *Lord* Roos, *the father of* Eleanor *mother of* George Maners, *knight, the father of* Thomas *Earl of* Rutland, *the father of the aforesaid* John Maners. *And this he is ready to verify, whereupon he prayeth judgment, and that the said panel may be quashed. Which said challenge by* ——— *and by* ——— *triers, to this chosen and sworn, is found true. And therefore let the panel aforesaid be quashed and amoved* &c. Tr. per p. 160.

Challenge becaufe the panel was returned at the inftance of the party.

And upon this, the said ——— *challanges the array of the said panel, because he says, that that panel was arrayed by one* J. S. *esquire, late sheriff of the county of* ——— *aforesaid, at the nomination of the said* ——— *and in his favour; which said challenge, by triers thereof sworn, is found true.*

For other forms of challenges, and proceedings thereupon, see *Tr. per pais* 159—184.

Juftifiable homicide. See Homicide.

Juftices of the peace.

JUSTICES of the peace are judges of record, appointed by the king, to be juftices within certain limits, for the confervation of the peace, and for the execution of divers things comprehended within their commiffion, and within divers ftatutes committed to their charge. *Dalt. c.* 2.

And a record or memorial made by a juftice of the peace, of things done before him judicially in the execution of his office, fhall be of fuch credit, that it fhall not be gainfaid. One man may affirm a thing, and another man may deny it; but if a *record* once fay the word, no man fhall be received to aver or fpeak againft it; for if men fhould be admitted to deny the fame, there would never be any end of controverfies And therefore to avoid all contention, while one faith one thing, and another faith another thing, the law repofeth it felf wholly and folely in the report of the judge. And hereof it cometh, that he cannot make a fubftitute or deputy in his office, feeing that he may not put over the confidence that is put in him. Great cauſe therefore have the juftices to take heed that they abuſe not this credit; either to the oppreffing of the fubject by making an untrue record, or the defrauding of the king by fuppreffing the record that is true and lawful. *Lamb.* 63—66.

Hereof also it cometh, that if a justice of the peace certify to the king's bench, that any person hath broken the peace in his presence, upon this certificate such person shall be there fined, without allowing him any traverse thereto. *Dalt. c.* 70.

And that I may treat intelligibly concerning this office (of which Lord *Coke* says the whole christian world hath not the like, if it be duly executed, 4 *Inst.* 170.) I will set forth

I. The office of conservators of the peace at the common law, before the institution of justices of the peace.

II. The commission of the justices of the peace, founded on the statute law.

III. The justice of the peace his oath of office.

IV. Of fees to be taken by justices of the peace.

V. Some general directions relating to justices of the peace, not falling under any particular title of this book.

VI. Their indemnity and protection by the law, in the right execution of their office; and their punishment for the omission of it.

I. The office of conservators of the peace at the common law, before the institution of justices of the peace.

Conservators by election.

1. Of ancient time such officers or ministers, as were instituted either for preservation of the peace of the county, or for execution of justice, because it concerned all the subjects of that county, and they had a great interest in the just and due exercises of their several places, were by force of the king's writ in every several county chosen in full or open county by the freeholders of that county: as before the institution of justices of the peace, there were conservators of the peace in every county, whose office (according to their names) was to conserve the king's peace, and to protect the obedient and innocent subjects from force and violence. These conservators, by the antient common law, were by force of the king's writ chosen by the freeholders in the county court, out of the principal men of the county; after which election so made, and returned, then in that case the king directed a writ to the party so elected, to take upon him and execute the office, until the king should order otherwise. And thus the coroners still continue to be chosen in full county; as also the knights of the shire for the the parliament. 2 *Inst.* 558, 559.

Conservators by office.

2. Besides these conservators of the peace properly so called, there were and are other conservators of the peace by virtue of certain offices: as for instance;

(1) The

(1) The lord chancellor, and every juſtice of the king's bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award proceſs for the ſurety of the peace, and to take recognizances for it. 2 *Haw.* 32.

(2) Alſo, every court of record, as ſuch, hath power to keep the peace within its own precinct. 2 *Haw.* 32.

(3) Alſo, every juſtice of the peace is a conſervator of the peace. *Crom.* 6.

(4) Alſo, every ſheriff is a principal conſervator of the peace, and may without doubt *ex officio* award proceſs of the peace, and take ſurety for it. And it ſeems the better opinion, that the ſecurity ſo taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation. 2 *Haw.* 33.

(5) Alſo, every coroner is another principal conſervator of the peace, and may certainly bind any perſon to the peace, who makes an affray in his preſence. But it ſeems the better opinion, that he has no authority to grant proceſs for the peace; and it ſeems clear, that the ſecurity taken by him for the keeping the peace (except only where it is taken by him as judge of his own court for an affray done in ſuch court) is not to be looked on as a recognizance, but as an obligation. 2 *Haw.* 33.

(6) Alſo, every high and petit conſtable are by the common law conſervators of the peace. 2 *Haw.* 33.

And it is ſaid, that if a conſtable ſee perſons engaged in an affray, or upon the very point of entring upon it, as where one ſhall threaten to kill, wound, or beat another, he may impriſon the offender of his own authority for a reaſonable time, till the heat ſhall be over, and alſo afterwards detain him till he find ſurety of the peace by obligation. 1 *Haw.* 137.

But it is ſaid, that a conſtable hath no power to arreſt a man for an affray done out of his own view; for it is the proper buſineſs of a conſtable to preſerve the peace, not to puniſh the breach of it; nor doth it follow from his having power to compel thoſe to find ſureties who break the peace in his preſence, that he hath the ſame power over thoſe who break it in his abſence. 1 *Haw.* 137.

3. There were alſo other conſervators of the peace by tenure; who held lands of the king by this ſervice, among others, of being conſervators of the peace within ſuch a diſtrict. 2 *Haw.* 33. Conſervators by tenure.

4. Alſo there were other conſervators of the peace by preſcription; who claimed ſuch power from an immemorial uſage in themſelves and their predeceſſors or anceſtors, or thoſe whoſe eſtate they had in certain lands, which wholly depended upon ſuch uſage, both as to its extent, and the manner in which it was to be exerciſed. 2 *Haw.* 33. Conſervators by preſcription.

Thus it is ſaid, that a mayor of a corporation may be a conſervator of the peace by preſcription. *Crom.* 6.

It is queſtioned indeed by ſome, whether any ſuch power can be claimed by uſage; yet if the power of holding pleas and even of courts of record, which are of ſo high a nature, and imply a

power of keeping the peace within their own precincts, may be claimed by usage, as it seems to be certain that they may; it seemeth that the bare authority of keeping the peace in a certain district may as well be claimed by such usage. 2 *Haw.* 34.

Power of conservators.

5. The authority which such conservators of the peace, whether by election, or tenure, or prescription, have at common law, is the same authority which constables of a vill or wapentake have at this day. *Crom.* 6. 2 *Haw.* 34.

Their duty.

6. The general duty of the conservators of the peace by the common law, is to employ their own, and to command the help of others, to arrest and pacify all such who in their presence and within their jurisdiction and limits, by word or deed, shall go about to break the peace. *Dalt. c.* 1.

And if a conservator of the peace, being required to see the peace kept, shall be negligent therein, he may be indicted and fined. *Dalt. c.* 1.

And if the conservators of the peace have committed or bound over any offenders, they are then to send to, or be present at, the next sessions of the peace, or gaol delivery, there to object against them. *Dalt. c.* 1.

II. Of the commission of justices of the peace.

Justices of the peace at this day are of three sorts; 1. By act of parliament; as the bishop of *Ely* and his successors, and the archbishop of *York*, and bishop of *Durham*, 27 H. 8. c. 4. 2. By charter, or grant made by the king under the great seal; as mayors and the chief officers in divers corporate towns. 3. By commission.

At the first, by the statute of the 1 *Ed.* 3. which is the first statute that ordains the assignment of justices of the peace by the king's commission, those justices had no other power but only to keep the peace. But the very next year, the form of the commission was enlarged, and continued still further to be inlarged both in that king's reign, and in the reign of almost every other succeeding prince, until the 30th year of the reign of Q. *Elizabeth*, when by the number of the statutes particularly given in charge therein to the justices, many of which nevertheless had been a good while before repealed, and by much vain repetition, and other corruptions that had crept into it, partly by the miswriting of clerks, and partly by the untoward huddling of things together, it was become so cumbersome and foully blemished, that of necessity it ought to be redressed. Which imperfections being made known to Sir *Chr. Wrey*, then Lord Ch. Justice of the king's bench, he communicated the same with the other judges and barons, so as by a general conference had amongst them, the commission was carefully refined in the *Michaelmas* term 1590, and being then also presented to the lord chancellor, he accepted thereof, and commanded the same to be used: Which continues with very little alteration to this day. *Lamb. c.* 9.

Which

Which is as follows:

George *the second by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth. To* A. B. C. D. *&c. greeting.*

Know ye that we have assigned you, jointly and severally, and every one of you, our justices to keep our peace in our county of W. *And to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our said county (as well within liberties as without) according to the force, form, and effect of the same; And to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; And to cause to come before you, or any of you, all those who to any one or more of our people concerning their bodies or the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons until they shall find such security to cause to be safely kept.*

We have also assigned you, and every two or more of you (of whom any one of you the aforesaid A. B. C. D. *&c. we will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, inchantments, sorceries, art magick, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted; And also of all those who in the aforesaid county in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; And also of all those who have there lain in wait, or hereafter shall presume to lay in wait, to maim or cut or kill our people; And also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them therefore made for the common benefit of* England *and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt; And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premisses, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; And of all and singular articles, and circumstances, and all other things whatsoever, that concern the premisses or any of them, by whomsoever, and after what manner soever, in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; And to inspect all indictments whatsoever*

so

ſo before you or any of you taken or to be taken, or before others late our juſtices of the peace in the aforeſaid county made or taken, and not yet determined; and to make and continue proceſſes thereupon, againſt all and ſingular the perſons ſo indicted, or who before you hereafter ſhall happen to be indicted; until they can be taken, ſurrender themſelves, or be outlawed: And to hear and determine all and ſingular the felonies, poiſonings, inchantments, ſorceries, arts magick, treſpaſſes, foreſtallings, regratings, ingroſſings, extortions, unlawful aſſemblies, indictments aforeſaid, and all and ſingular other the premiſſes, according to the laws and ſtatutes of England, *as in the like caſe it has been accuſtomed, or ought to be done; And the ſame offenders, and every of them for their offences, by fines, ranſoms, amerciaments, forfeitures, and other means as according to the law and cuſtom of* England, *or form of the ordinances and ſtatutes aforeſaid, it has been accuſtomed, or ought to be done, to chaſtiſe and puniſh.*

Provided always, that if a caſe of difficulty, upon the determination of any the premiſſes, before you, or any two or more of you, ſhall happen to ariſe; then let judgment in no wiſe be given thereon, before you, or any two or more of you, unleſs in the preſence of one of our juſtices of the one or other beneh, or of one of our juſtices appointed to hold the aſſizes in the aforeſaid county.

And therefore we command you and every of you, that to keeping the peace, ordinances, ſtatutes, and all and ſingular other the premiſſes, you diligently apply your ſelves; and that at certain days and places, which you, or any ſuch two or more of you as is aforeſaid ſhall appoint for theſe purpoſes, into the premiſſes ye make inquiries; and all and ſingular the premiſſes hear and determine, and perform and fulfil them in the aforeſaid form, doing therein what to juſtice appertains, according to the law and cuſtom of England: *Saving to us the amercements, and other things to us therefrom belonging.*

And we command by the tenor of theſe preſents our ſheriff of W. *that at certain days and places, which you, or any ſuch two or more of you as is aforeſaid, ſhall make known to him, he cauſe to come before you, or ſuch two or more of you as aforeſaid, ſo many and ſuch good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premiſſes ſhall be the better known and inquired into.*

Laſtly, we have aſſigned you the aforeſaid A. B. *keeper of the rolls of our peace in our ſaid county. And therefore you ſhall cauſe to be brought before you and your ſaid fellows, at the days and places aforeſaid, the writs, precepts, proceſſes, and indictments aforeſaid, that they may be inſpected, and by a due courſe determined as is aforeſaid.*

In witneſs whereof we have cauſed theſe our letters to be made patent. Witneſs our ſelf at Weſtminſter *&c.*

George *the ſecond* &c.] This manner of iſſuing the commiſſion in the king's name, ſeems to be founded on the ſtatute of the 27 *H.* 8. *c.* 24. which enacts, that all juſtices of the peace ſhall be made by letters patents under the king's great ſeal, in the name

name and by authority of the king; but reſerves to all cities and towns corporate which have juſtices, the liberties which they have enjoyed in that behalf.

To A. B. C. D. &c. *greeting*] From the perſons here named in the commiſſion, it may be proper to conſider, who may, or may not, be juſtices of the peace.

By the ſtatutes of 13 *R.* 2. *c.* 7. and 2 *H.* 5. *ſt.* 2. *c.* 1. The juſtices ſhall be made within the counties of the moſt *ſufficient* knights, eſquires, and gentlemen of the law.

And by the 18 *G.* 2. *c.* 20. it is enacted as follows: *viz.* No perſon ſhall be capable of being or acting as a juſtice of the peace, who ſhall not have in law or equity, for his own uſe, in poſſeſſion, a freehold, copyhold, or cuſtomary eſtate for life, or for ſome greater eſtate, or an eſtate for ſome long term of years, determinable upon one or more lives, or for a certain term originally created for 21 years, or more, in lands, tenements, or hereditaments, in *England* or *Wales*, of the clear yearly value of 100 *l.* above what will diſcharge all incumbrances affecting the ſame, and all rents and charges payable out of the ſame; or who ſhall not be intitled to the immediate reverſion or remainder of lands leaſed for one, two, or three lives, or for any term of years determinable on the death of one, two or three lives, upon reſerved rents of the clear yearly value of 300 *l.*

And who ſhall not before he acts, at the ſeſſions of the county where he intends to act, take and ſubſcribe the oath following; *I* A. B. *do ſwear, that I truly and* bona fide *have ſuch an eſtate, in law or equity, to and for my own uſe and benefit, conſiſting of* ——— (ſpecifying the nature of ſuch eſtate, whether meſſuage, land, rent, tythe, office, benefice, or what elſe) *as doth qualify me to act as a juſtice of the peace for the county, riding, or diviſion of* ———, *according to the true intent and meaning of an act of parliament made in the* 18*th year of the reign of his majeſty king* George *the ſecond, intitled, An act to amend and render more effectual an act paſſed in the fifth year of his preſent majeſty's reign, intitled, An act for the further qualification of juſtices of the peace; and that the ſame* (except where it conſiſts of an office, benefice, or eccleſiaſtical preferment, which it ſhall be ſufficient to aſcertain by their known and uſual names) *is lying or being, or iſſuing out of lands, tenements, or hereditaments, being within the pariſh, townſhip, or precinct of* ———, *or in the ſeveral pariſhes, townſhips, or precincts of* ———, *in the county of* ———, *or in the ſeveral counties of* ——— (as the caſe may be.)

Which oath taken and ſubſcribed, ſhall be kept by the clerk of the peace among the records of the ſeſſions.

And the clerk of the peace ſhall on demand forthwith deliver an atteſted copy to any perſon paying 2 *s.* for the ſame; which being proved to be a true copy of ſuch oath, ſhall be admitted in evidence on any iſſue in an action brought on this act.

And if any perſon ſhall act as juſtice, without having taken and ſubſcribed the ſaid oath, or without being qualified as above, he ſhall for every offence forfeit 100 *l.* half to the poor of the pariſh

pariſh in which he moſt uſually reſides, and half to him who ſhall ſue, with full coſts. The proſecution to be in ſix months.

And in ſuch action, the proof of the qualification ſhall lie on the perſon againſt whom it is brought.

And if the defendant intends to inſiſt on any lands not contained in ſuch oath, he ſhall at or before the time of pleading deliver to the plaintiff or his attorney a notice in writing ſpecifying ſuch lands, and the pariſh and county where they are ſituate (offices and benefices excepted, which it ſhall be ſufficient to aſcertain by their uſual names:) And if the plaintiff in ſuch ſuit ſhall think fit thereon not to proceed further, he may with leave of the court diſcontinue ſuch ſuit, on payment of coſts to the defendant as the court ſhall award.

And upon trial no eſtate, but what is contained in the oath and notice, ſhall be admitted as any part of the qualification.

And if the plaintiff or informer ſhall diſcontinue (otherwiſe than as aforeſaid) or be nonſuit, or judgment be given againſt him, he ſhall pay treble coſts.

But this ſhall not extend to any city, town, or liberty, having juſtices of their own; nor to any peer, lord of the privy council, judge, attorney or ſolicitor general, or to the juſtices of the great ſeſſions for *Cheſhire* and *Wales*, or to the eldeſt ſon or heir apparent of a peer, or of any perſon qualified to ſerve as knight of a ſhire:

Nor to the officers of the board of green cloth, or principal officers of the navy, or the two under ſecretaries in each of the offices of the principal ſecretary of ſtate, or the ſecretary of *Chelſea* college, in their reſpective liberties; nor to the heads of colleges or halls, or vicechancellor, of either of the univerſities, or to the mayors of *Oxford* or *Cambridge*.

By the 1 *M. ſeſſ.* 2. *c.* 8. No *ſheriff* ſhall exerciſe the office of a juſtice of the peace, during the time that he acts as ſheriff. And the reaſon ſeems to be, becauſe he cannot act at the ſame time both as judge and officer, for ſo he would command himſelf to execute his own precepts. *Dalt. c.* 3.

Alſo if he be made a *coroner*, this by ſome opinions is a diſcharge of his authority of juſtice. *Dalt. c.* 3.

But if he be created duke, archbiſhop, marquiſs, earl, viſcount, baron, biſhop, knight, judge, or ſerjeant at law, this taketh not away his authority of a juſtice of the peace. 1 *Ed.* 6. *c.* 7. *Dalt. c.* 3.

Alſo, no *attorney*, ſolicitor, or proctor, ſhall be a juſtice of the peace, during the time he ſhall continue in the practice of that buſineſs. 5 *G.* 2. *c.* 18. *ſ.* 2.

By *Holt* Ch J. Tho' a man be a mayor, it doth not follow that he is a juſtice of the peace, for that muſt be by a particular grant in the charter. L. *Raym.* 1030. But altho' he be not a juſtice of the peace by the charter, yet there are many caſes, wherein he hath the ſame power as a juſtice of the peace given unto him by particular ſtatutes; as for inſtance, with regard to the cuſtoms, alehouſes, lord's day, ſwearing, gaming, weights, ſervants, fuel, leather, orchards, ſoldiers, and divers others.

Know

Know ye that we have aſſigned you] This is founded on the ſtatute of the 1 *Ed.* 3. *c.* 16. *viz.* For the better keeping and maintenance of the peace, the king will, that in every county good men and lawful, which be no maintainers of evil, or barretors in the country, ſhall be aſſigned to keep the peace.

And from this act we are to date that great alteration in our conſtitution, whereby the election of conſervators of the peace was taken from the people, and tranſlated to the aſſignment of the king. *Lamb.* 20.

And here we may obſerve, that the commiſſion hath two parts; or conſiſteth of two different Aſſignments: By this firſt aſſignment, any one or more juſtices have as well all the ancient power touching the peace, which the conſervators of the peace had at the common law, as alſo that whole authority which the ſtatutes have ſince added thereto. *Dalt. c.* 5.

Jointly and ſeverally, and every one of you] Whatſoever any one juſtice alone may do, the ſame alſo may lawfully be done by any two or more juſtices; but where the law giveth authority to two, there one alone cannot execute it. *Dalt. c.* 6.

And yet where a ſtatute appointeth a thing to be done by two juſtices or more, if the offence be any miſdemeanor or matter againſt the peace, there upon complaint made of the offence, to any one of thoſe juſtices, it ſeemeth that one of them may grant out his warrant to attach the offender, and to bring him before the ſame juſtice and the other juſtice ſo appointed (at ſome convenient place), and then they to hear and determine the ſame. *Dalt. c.* 6.

But it ſeemeth, that when a thing is appointed by any ſtatute to be done by or before one perſon certain, ſuch thing cannot be done by or before any other: and by ſuch expreſs deſignation of one, all others are excluded, and their proceedings therein are *coram non judice*. *Dalt. c.* 6.

Our juſtices] In that the king calls them *our* juſtices, their authority determines of courſe by his death or demiſe; ſo that he being once dead, or having given over his crown, they are no more his juſtices; and the juſtices of the next prince they cannot be, unleſs it ſhall pleaſe him afterwards ſo to make them. *Dalt. c.* 3.

But by the 1 *An. ſt.* 1. *c.* 8. *ſ.* 2. No patent or grant of any office or employment ſhall determine by the king's death or demiſe, but ſhall continue in force for ſix months after, unleſs in the mean time made void by the ſucceſſor.

Alſo, before his death or demiſe, the king may determine the commiſſion at his pleaſure; and that either expreſſed, as by writ under the great ſeal, or by implication, by making a new commiſſion, and leaving out the former juſtices names. But until notice, or publiſhing of the new commiſſion, the acts of the former juſtices are good in law. *Dalt. c.* 3.

But to mayors, and chief officers in corporations, which have the authority of juſtices of the peace, or of conſervators of the peace,

peace, by grant under the king's letters patent to them and their ſucceſſors the authority remaineth, notwithſtanding the king's death or demiſe. *Dalt. c.* 3.

Neither can the king diſcharge theſe again at his pleaſure; but yet ſuch grants and charters may for ſome great and general defect, or miſcarriage, in the execution of the powers therein granted, be repealed, and the liberties ſeized. *Dalt. c.* 3.

Juſtices to keep our peace] Altho' they are in no part of the commiſſion called *keepers of the peace*, yet inaſmuch as by the 18 *Ed.* 3. *c.* 2. they are expreſly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace, and their uſual deſcription in *certioraries* is by the name of *keepers of the peace*; it hath been adjudged, that in the caption of an indictment, *keepers of the peace and juſtices of our lord the king*, is good, without expreſly naming them *juſtices of the peace*. 2 Haw. 38.

To keep our peace] Theſe words ſeem to give them the authority which the conſervators of the peace had at common law; and all that follows in the commiſſion, ſeems an addition to the power of the ancient conſervators.

Our peace] It hath been reſolved, that the deſcription of juſtices of the peace, by the name of *juſtices of our lord the king to keep the peace*, is good, without ſaying, *the peace of our lord the king*; for that is neceſſarily implied. 2 *Haw.* 38.

Alſo, by theſe words *our peace*, when the king dies, the ſurety of the peace is diſcharged; for when he is dead, it is not *his* peace. *Crom.* 124.

In our county of W.] Here are two conſiderations; One is, that the juſtice cannot act when he is out of the county; And the other is, that when he is in the county, he can act for that county only, and his power extendeth to no other. But both theſe are to be underſtood with ſome limitations.

As to the former caſe, when he is out of the county; It is ſaid, that the juſtices have no *coercive* power when out of the county; and therefore that an order of baſtardy, or for payment of labourers wages, made by them out of the county, is not binding. Yet it is ſaid, that *recognizances* and *informations* voluntarily taken before them in any place, are good. 2 *Haw.* 37.

And L. *Hale* ſays, that a juſtice of the peace may do a miniſterial act out of his county, as examining a party robbed whether he knows the felons; but that he cannot do a compulſory act, as committing a perſon for not giving recognizance. 2 *H. H.* 50, 51.

Alſo, by the 9 *G. c.* 7. Juſtices dwelling in a city or precinct that is a county of it ſelf, within the county at large, may act at his own dwelling houſe for ſuch county at large.

And as to the latter caſe, wherein it is ſuppoſed that his power is limited unto that county only,—it is enacted by the 24 *G.* 2. *c.* 55. that if any perſon againſt whom a legal warrant ſhall be iſſued, ſhall eſcape, go into, reſide, or be in any place out of the

juriſdiction

juriſdiction of the juſtice granting the warrant, either before or after the iſſuing thereof; any juſtice for the county or place, where ſuch perſon ſhall ſo eſcape or be, upon proof on oath, of the hand writing of the juſtice granting ſuch warrant, ſhall indorſe his name thereon; which ſhall be a ſufficient authority to the perſon bringing ſuch warrant, and to all other perſons to whom the ſame was originally directed, to execute the ſame in ſuch other county or place, and to carry the offender before the juſtice who indorſed the warrant, or ſome other juſtice of that county, if the offence be bailable, and the offender be ready to give bail for his appearance at the next aſſizes or ſeſſions for the county or place where the offence was committed; and ſuch juſtice ſhall take bail accordingly, and ſhall deliver the recognizance, together with the examination or confeſſion of the offender, and all other proceedings relating thereto, to the conſtable or other perſon, who ſhall (on pain of 10 *l.* to him who ſhall ſue) deliver over the ſame to the clerk of aſſize, or clerk of the peace, where the offender is required to appear. And if the offence is not bailable, or he ſhall not give bail to the ſatisfaction of the juſtice before whom he is brought, the conſtable or other perſon ſhall carry the offender before a juſtice of the proper county or place, where the offence was committed, there to be dealt with according to law.

And to keep and cauſe to be kept all ordinances and ſtatutes for the good of the peace] It ſeems certain, that by virtue hereof, they may execute all ſtatutes whatſoever, made for the better keeping of the peace, and conſequently thoſe of *Wincheſter* and *Weſtminſter*, and all others concerning the peace, made before the reign of *Ed.* 3. in whoſe time (as hath been ſaid) juſtices of the peace were firſt inſtituted; for all thoſe ſtatutes were expreſly mentioned in the ancient commiſſions of the peace, and have always been undoubtedly taken to be included in theſe general words of the preſent commiſſion. And yet none of the ſtatutes which ordain the office of juſtices of the peace, ſay any thing concerning the execution of the ſaid former ſtatutes; ſo that the power of juſtices of the peace in relation to thoſe ſtatutes ſeems entirely to depend on the king's commiſſion, and yet hath always been unqueſtionably allowed. From whence it appears, that regularly the king, by his commiſſion, may authorize whom he pleaſes to execute an act of parliament. 2 *Haw.* 37.

But if no power be expreſly given in any ſuch ſtatute to any one juſtice alone, he cannot proceed upon it, but he may prefer the cauſe at the ſeſſions, and work it to a preſentment upon the ſtatute. *Dalt. c.* 5.

But beſides the ſtatutes relating to the peace, there are alſo many other ſtatutes which are not ſpecified in the commiſſion, and yet are committed to the charge and care of the juſtices of the peace, by the expreſs words of ſuch ſtatutes; and all ſuch ſtatutes are to them a ſufficient warrant and commiſſion of themſelves, altho' they be not recited in the commiſſion, and are to be executed by them, according as the ſame ſtatutes themſelves do ſeverally preſcribe and ſet down. *Dalt. c.* 5.

Statutes for the good of the peace] Altho' a *præmunire* is not within the letter of the commiſſion, yet inaſmuch as it is againſt the peace of the king and of the realm, any juſtice may cauſe a perſon to be apprehended for ſuch offence, and take his examination, and informations againſt him, and certify the ſame to the king's bench or gaol delivery. 2 *Haw.* 39. And the ſame may be ſaid of other like offences.

And for the quiet government of our people] Of *our* people;—yet it ſeemeth, that the ſubjects of a foreign prince coming into *England*, and living under the protection of our king, ſhall be ſubject to, and have the benefit of the laws, in reſpect of the local allegiance which they owe to him. 2 *Haw.* 35. 1 *H. H.* 93, 94.

As well within liberties as without] By theſe words ſhall be intended ſuch liberties and franchiſes which have return of writs, and not ſuch as are counties of themſelves, as *London*, *Norwich*, *York*, and ſuch like. *Crom.* 8.

But yet from hence it ſeems clearly to follow, that they may execute their office within a town (not being a county of it ſelf) altho' it have a ſpecial commiſſion of the peace for its own limits, unleſs ſuch commiſſion have a clauſe, that no other juſtices except thoſe named in it, ſhall any way concern themſelves in the keeping of the peace within the liberties of ſuch town; And it may be queſtioned, whether ſuch a ſpecial clauſe in ſuch a commiſſion do abſolutely make void the act of any county juſtice within ſuch town; ſince the commiſſion for the county ſeems as fully to give thoſe named in it a juriſdiction over all ſuch towns within the precinct of it, as ſuch commiſſion for a town doth exclude them. And the juſtices for the county ſeem to be under no neceſſity of informing themſelves of the contents of a commiſſion, which they have nothing to do with. Yet if they have expreſs notice given them of ſuch a reſtraining clauſe, and proceed to act within ſuch town in defiance of it, they may perhaps be puniſhable for their contempt of the king's prohibition; and yet perhaps it may be queſtioned whether their acts be void, for the reaſons abovementioned. 2 *Haw.* 37.

And Lord *Hale* treating on the ſame ſubject, ſays, if the king by charter grant to a corporation, that the mayor, and recorder, or other, ſhall be juſtices within the ſame; yet if there be no words of excluſion, the juſtices of the county have a concurrent juriſdiction: But if this franchiſe of being juſtices be granted, *ſo that the juſtices of the county ſhall not intermeddle (ſe non intromittant)*; then tho' a ſubſequent commiſſion be granted in the county at large, it ſeems they have no juriſdiction in this corporation or town: yet it is queſtionable, whether an indictment in the franchiſe be void, or only a contempt in the juſtices. 2 *H. H.* 47.

But in the caſe of *Talbot* and *Hubble*, *T.* 14 *G.* 2. The queſtion was, whether as the city of *New Sarum* had an excluſive commiſſion of the peace, the juſtices of the county of *Wilts* could by virtue of the 12 *C.* 2. *c.* 23. & 15 *C.* 2. *c.* 2. act in exciſe matters

matters within the city. This case was argued three times at the bar, and this term *Lee* Ch. J. delivered the resolution of the court: 1. That the crown might grant to any city, to have justices of their own within themselves, and exclude the county justices from intermeddling in the ordinary business of a justice of the peace. 2. That in such case, the act of the county justices would be void, and not to be considered only as a breach of the franchise. 3. That though the 12 *C.* 2. gives the jurisdiction in excise matters to the justices of the peace residing near the place where the forfeiture shall be made, or offence committed; yet it never was the design of the legislature, to make any alteration in the respective jurisdictions of the justices, but only to vest the excise jurisdiction in justices of counties, cities, and places, with respect to their several local jurisdictions within such places. *Str.* 1154.

Concerning their bodies] *Lambard* and *Dalton* both think it seems clear, that if a man is in fear that another will hurt his *servants*, or *cattle*, or other *goods*, the surety of the peace shall not be granted; but Mr. *Dalton* is of opinion, that if one threatens to hurt a man's *wife*, or *child*, he may crave the peace by virtue of these words. *Lamb.* 82. *Dalt. c.* 116.

Have used threats] It should seem from the many causes which from time to time have been adjudged sufficient to bind to the good behaviour, that this expression is not to be understood of *words* only, but of threatning *actions* likewise, or any thing whereby a man has just cause to apprehend the burning of his houses, or some bodily hurt to be done to him.

To find sufficient security] This is done by recognizance; by a reasonable intendment of law, more than by any especial law in that case provided. *Crom.* 125.

For the peace or their good behaviour] Lord *Hale*, speaking of the statute of the 34 *Ed.* 3. *c.* 1. (on which Mr. *Crompton* says the power of justices to bind to the good behaviour is grounded) says, that this power of binding, tho' expressed generally, and without any time limited, yet is not intended to be perpetual, but in nature of bail, *viz.* to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 *H. H.* 136.

In our prisons] The king's prison is the common gaol of the county: But by the statute of the 6 *G. c.* 19. the justices may commit vagrants and other criminals, and persons charged with small offences, either to the gaol, or to the house of correction, by their discretion, for such offences, or for want of sureties.

We have also assigned you, and every two or more of you] Here beginneth the second part of the commission, or the second assignment: All the business within which assignment belongeth to the sessions of the peace. *Dalt. c.* 5.

And by this it appeareth, that two justices may hold a sessions, but that one justice cannot. *Crom.* 6, 7.

Of whom any one of you the aforeſaid A. B. C. D. *&c. we will ſhall be one*] This clauſe, which gives power to two or more juſtices to hear and determine offences, requires that at leaſt one of thoſe juſtices be of that ſelect number, which is commonly termed of the *Quorum* (from that word in the *Latin* commiſſions, *Quorum — unum eſſe volumus.*) For thoſe of the *quorum* were wont to be choſen ſpecially for their knowledge in the laws: And this was it which led the makers of ſeveral ancient ſtatutes expreſly to enact, that ſome learned in the laws ſhould be put into the commiſſion of the peace; and (to ſay the truth) all ſtatutes that require the preſence of the *quorum*, do ſecretly ſignify ſuch a learned Man. For albeit that a diſcreet perſon (not converſant in the ſtudy of the laws) may ſufficiently follow ſundry particular directions concerning this ſervice of the peace; yet when the proceeding muſt be by way of preſentment or indictment, upon the evidence of witneſſes, and oaths of jurors, and by the order of hearing and determining, according to the ſtreight rule and courſe of the law, it muſt be confeſſed that learning in the laws is very neceſſary. *Lamb.* 48, 49.

But learning being now greatly advanced and improved ſince the firſt inſtitution of this office, this diſtinction is not uſually made in the commiſſions of late years, but all the juſtices are equally aſſigned to be of the *quorum*; and by the ſtatute of 26 *G.* 2. *c.* 27. no act, order, adjudication, warrant, indenture of apprenticeſhip, or other inſtrument done or executed by two or more juſtices, which doth not expreſs that one or more of them is of the *quorum* (altho' the ſtatutes reſpectively do require it) ſhall be impeached, ſet aſide, or vacated, for that defect only.

By the oath of good and lawful men] That is, by a jury ſworn.

Of all and all manner of felonies] That is, either by the common law, or by ſtatute. *Crom.* 8.

Felonies] Tho' the commiſſion doth not mention *murders* and *manſlaughters*, by expreſs name, but only felonies generally, yet by theſe general words they have power to hear and determine murder and manſlaughter, and alſo may take an indictment of *ſe defendendo*, contrary to the opinions of *Fitzherbert* and *Stamford*. But tho' the juſtices have this power, yet they do not ordinarily proceed to hear and determine theſe offences, and rarely other offences without clergy, both becauſe of the monition and clauſe in their commiſſion, in caſes of difficulty to expect the preſence of the juſtices of aſſize; and alſo becauſe of the direction of the ſtatute of the 1 & 2 *P. & M. c.* 13. which directs juſtices of the peace, in caſe of manſlaughter and other felonies, to take the examination of the priſoner, and the information of the fact, and put the ſame in writing; and then to bail the priſoner, if there be cauſe, and to certify the ſame with the bail at the next gaol delivery; And therefore in caſes of great moment, they bind over the proſecutors, and bail the party if bailable, to the next gaol delivery. But in ſmaller matters, as petit larceny, and ſome

caſes within clergy, they bind over to the ſeſſions; but this is only in point of diſcretion and convenience, not becauſe they have not juriſdiction of the crime. 2 *H. H.* 46.

So alſo, an inquiſition of *ſelf murder*, if the body cannot be ſeen, and ſo not inquired of by the coroner, may be taken before juſtices of the peace; for it is a felony, and within the extent of their commiſſion. 1 *H. H.* 414.

So alſo, if a perſon hath committed *treaſon*, tho' the juſtices have no cognizance of it as treaſon, yet they have cognizance of it as a felony, and as a breach of the peace; and therefore a juſtice of the peace, upon information on oath, may iſſue his warrant to take the traytor, and may take his examination, and commit him to priſon. 1 *H. H.* 580.

Poiſonings] The word in the latin commiſſions was *venefica*; and before the ſtatute of the 9 *G.* 2. *c.* 5. which aboliſheth witchcraft, was in the *Engliſh* tranſlations rendred witchcrafts.

Inchantments, ſorceries, arts magick] Theſe alſo are aboliſhed by the ſaid ſtatute, which enacts, that no proſecution ſhall thereafter be commenced againſt any perſon, for witchcraft, ſorcery, inchantment, or conjuration.

And from the words continuing in the commiſſion, when the crime itſelf is aboliſhed, we may obſerve the averſeneſs in the ſuperior courts from altering ancient forms.

Treſpaſſes] This is founded on the ſtatute of the 34 *Ed.* 3. *c.* 1. which enacts, that the juſtices aſſigned ſhall have power to reſtrain the offenders, rioters, and all other barators, and to chaſtiſe them according to their treſpaſs or offence.

And upon this Mr. *Hawkins* obſerves, that the word *treſpaſs* is of a very general extent, and in a large ſenſe not only comprehends all inferior offences, which are properly and directly againſt the peace, as aſſaults and batteries, and ſuch like, but alſo all others which are ſo only by conſtruction; as all breaches of the law in general are ſaid to be. Yet it hath been of late ſettled, that juſtices of the peace have no juriſdiction over forgery or perjury at the common law; the principal reaſon of which reſolution, he ſays, as he apprehended was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was, for the preſervation of the peace againſt perſonal wrongs, and open violence; and the word *treſpaſs* in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the ſaid ſtatute and commiſſion, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40.

The word for treſpaſſes in the old latin commiſſions, is *tranſgreſſiones*.

Foreſtallings, regratings, ingroſſings] Over theſe offences the juſtices in ſeſſions have a juriſdiction given to them, by the ſtatute of the 5 & 6 *Ed.* 6. *c.* 14.

Extortions] The intent of this word is, to inquire of those who have done excessive wrongs; for wrong done by any one is properly trespass, but excessive wrong done by any one is called extortion; and this is more properly in officers, as sheriffs, mayors, bailiffs, escheators, and other officers whatsoever (as well spiritual as temporal) who by colour of their office have done great oppression and excessive wrong to the king's subjects, in taking excessive rewards or fees for doing their offices. *Crom.* 8.

The justices have no express power given them over this offence by any statute; upon which Mr. *Hawkins* observes, that justices of the peace have jurisdiction of all inferior crimes within their commission, whether such crimes be mentioned in any statute concerning them or not; for that all such crimes are either directly, or at least by consequence and judgment of law, against the peace: And upon this ground principally, he says, as he apprehended, it was lately resolved, that they may take an indictment of *extortion*. 2 *Haw.* 40.

And of all and singular other crimes and offences of which the justices of our peace may or ought lawfully to inquire] Which general words seem to include the vast number of offences over which they have a jurisdiction given them by many statutes, and which are not particularly mentioned in the commission.

And also of all those who in companies against our peace in disturbance of our people with armed force have gone or rode] By these words they are to inquire of riots, routs, and all unlawful assemblies. *Crom.* 8.

Weights or measures] This clause was first established by the 34 *Ed.* 3. *c.* 5. And they have further power given herein by several subsequent statutes, all which statutes must be strictly pursued in relation to the several offences.

Selling victuals] Over this they have a jurisdiction given them, by the 2 & 3 *Ed.* 6. *c.* 15. intitled, *The bill of conspiracies of victuallers and craftsmen.*

And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themselves] This clause is as ancient as the 4 *Ed.* 3. *c.* 2. on which it is founded.

And it hath been suffered to remain in the commission, not as of any necessity at all (since it is incident to every court of record to do correction upon whatsoever officers and ministers do serve them), but only for the plainer declaration of the power of these justices in that behalf, and for the more assured terrifying of such as shall either of contempt or negligence, do that which is amiss. *Lamb.* 49.

And to inspect all indictments so before you taken] But they cannot proceed upon indictments taken before coroners, or justices of oyer and terminer or gaol delivery; but on indictments taken before the sheriff in his turn they may proceed. *Hale's Pl.* 168.

Or before other late our juſtices] This is founded on the ſtatute 11 *H.* 6. *c.* 6. which enacts, that no indictment, plea, ſuit, or proceſs ſhall be diſcontinued by a new commiſſion; but the juſtices in the new commiſſion, after they ſhall have the records of the ſame pleas and proceſſes before them, ſhall have power to continue the ſaid pleas and proceſſes, and to hear and finally to determine the ſame, as the former juſtices might have done.

And to make and continue proceſſes] This is by *venire*, *diſtringas*, *capias*, or *exigent*, as the caſe ſhall be. And it differs from a warrant, in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the king or of the juſtice; but the proceſs iſſues after indictment, and muſt be in the name of the king only. *Dalt. c.* 193.

Until they can be taken, ſurrender themſelves, or be outlawed] For the proceſs is ſent out to this end, that either the party ſhall come in, to anſwer, and to be juſtified by the law; or elſe that he ſhall for his contumacy be deprived of the benefit of the law. *Lamb.* 521.

Or be outlawed] It is obſervable that the power of the juſtices ſtops here, and goes no further; ſo that they cannot make out a *capias utlagatum*, but the outlawry muſt be certified into the king's bench. *Lamb.* 521. 2 *H. H.* 52.

But by the 12 *Co.* 103. they that have power to award proceſs of outlawry, have alſo a power to award a *capias utlagatum*, as incident to their authority and juriſdiction.

Hear and determine] This power was firſt given to them by the ſtatute of the 18 *Ed.* 3. *ſt.* 2. *c.* 2. and afterwards confirmed and enlarged by divers other ſtatutes.

Yet this clauſe doth not in propriety make the juſtices of the peace juſtices of oyer and terminer, becauſe that is a diſtinct commiſſion; and therefore a ſtatute limiting an offence to be heard and determined before juſtices of oyer and terminer, gives not the power therein to juſtices of the peace. *Hale's Pl.* 165.

And thereupon it is ſaid, that altho' they have power to hear and determine felonies, yet they cannot deliver a perſon ſuſpected thereof by proclamation (as juſtices of gaol delivery may) until an inquiſition taken; but if an inquiſition be taken, and an *ignoramus* found, they may deliver him as it ſeemeth. 2 *H. H.* 46, 47.

Likewiſe, altho' commiſſioners of oyer and terminer may indict and try at the ſame ſeſſions, yet it hath been ruled otherwiſe in caſe of juſtices of the peace, unleſs by conſent; but certainly conſtant uſage and learned opinion muſt give that expoſition upon thoſe reſolutions, that it muſt extend only to popular actions or indictments for miſdemeanors, and not in caſes of felony. 2 *H. H.* 48.

By fines, ranſoms, amerciaments, forfeitures, and other means—to chaſtiſe and puniſh] Hereby the juſtices are now armed with far more ample authority and power, than the ancient conſervators of the peace were; for they had no power to convene the offender before them, nor to examine, hear, or determine the

cause, nor to punish except in some few cases as mentioned before. *Dalt. c.* 6.

But the justices may not award any recompence to the party wronged, otherwise than by persuasion. *Dalt. c.* 5.

Nevertheless, these words are inserted, not as of necessity (for the punishment of all offenders is implied in the word *determine*), but for the plainer declaration of the justices power, and for the more assured terrifying of offenders. *Lamb.* 49.

If a case of difficulty shall happen to arise] That is, a difficulty in point of law. *Crom.* 6.

Then let judgment in no wise be given] But yet if they list to proceed without the judge's advice, their judgment is not void; but it standeth good and effectual, until it be reversed by a writ of error. *Lamb.* 50.

At certain days and places] That is, when they hold their sessions; which they are impowered and required to do, by several statutes.

Lastly, we have assigned you the aforesaid A. B. *keeper of the rolls*] This is in pursuance of the statute of the 37 *H.* 8. *c.* 1. which enacts, that the lord chancellor shall by commission assign such person to be *custos rotulorum* as the king shall by writing under his hand appoint.

III. The justice of the peace his oath of office.

On renewing the commission of the peace (which generally happeneth as any person is newly brought into the same) there cometh a writ of *dedimus potestatem* directed out of chancery, to some ancient justice (or other) to take the oath of him which is newly inserted, which is usually in a schedule annexed; and to certify the same into that court, at such a day as the writ commandeth. *Lamb.* 53.

The form of which oath at this day is as followeth:

Ye shall swear, that as justice of the peace in the county of W. *in all articles in the king's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the realm, and statutes thereof made: And ye shall not be of counsel of any quarrel hanging before you: And that ye hold your sessions after the form of the statutes thereof made: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entred without any concealment (or imbezilling) and truly send them to the king's exchequer. Ye shall not let, for gift or other cause, but well and truly ye shall do your office of justice of the peace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute. And ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiffs of the said county, or other the king's officers or ministers, or other indifferent persons, to do execution thereof. So help you god.*

This

This oath ſeems to be founded on the ſtatute of the 13 *R.* 2. *c.* 7. which enacts, that the juſtices ſhall be ſworn, duly and without favour, to keep and put in execution all the ſtatutes and ordinances touching their offices.

Beſides this oath of office, he is likewiſe to take the oath mentioned in the laſt ſection concerning his qualification by eſtate; and he muſt, within ſix months after, take alſo the oaths of allegiance, ſupremacy, and abjuration, and make and ſubſcribe the declaration againſt tranſubſtantiation, at the ſeſſions, as other perſons admitted to offices.

IV. Of fees to be taken by juſtices of the peace.

In the oath of office abovementioned are theſe words; *And that you take nothing for your office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.*

And by ſtatute their fees in many caſes are limited and aſcertained; as is noted under the reſpective titles where they fall in throughout this book.

And for the reſt it is provided generally by the ſtatute of the 26 *G.* 2. *c.* 14.

That the juſtices at *Midſummer* ſeſſions 1753, ſhall ſettle a table of their clerks fees; which being approved by the juſtices at the next ſucceeding ſeſſions, with ſuch alterations as the juſtices there ſhall think proper, ſhall be laid before the judges at the next aſſizes, who ſhall confirm the ſame with ſuch alterations, additions, or abatements, as to them ſhall appear juſt and reaſonable: And the ſeſſions from time to time may make any other table of fees, and after the ſame ſhall have been approved by the next ſucceeding ſeſſions, ſhall lay the ſame before the judges at the next aſſizes, who may ratify the ſame in like manner: and no table of fees ſhall be valid, until confirmed by the judges. *ſ.* 1.

And if after three months from the time that ſuch table ſhall be confirmed, any juſtice's clerk ſhall demand or take any other or greater fee than ſhall have been ſo confirmed, he ſhall forfeit 20 *l.* to him who ſhall ſue in three months. *ſ.* 2, 4.

And the ſaid table of fees ſhall be depoſited with the clerk of the peace, who ſhall cauſe true copies thereof to be kept conſtantly in a conſpicuous part of the room where the ſeſſions are held, on pain of 10 *l.* *ſ.* 3.

And by the 27 *G.* 2. *c.* 16. In *Middleſex*, the like table ſhall be confirmed, by the two lord chief juſtices, and the lord chief baron, or any two of them. *ſ.* 4.

V. Some general directions relating to juſtices of the peace, not falling under any particular title of this book.

1. Regularly, juſtices of the peace ought not to execute their office, in their own caſe; but cauſe the offenders to be convened or carried before ſome other juſtice, or deſire the aid of ſome other juſtice being preſent. *Dalt. c.* 173. Juſtice being a party.

By

By *Holt* Ch. J. *M.* 10 *W.* The mayor of *Hereford* was laid by the heels, for ſitting in judgment in a cauſe where he himſelf was leſſor of the plaintiff in ejectment, though he by the charter was ſole judge of the court. 1 *Salk.* 396.

H. 3 *An.* The caſe of *Foxham* Tithing in the county of *Wilts.* A juſtice of the peace was ſurveyor of the highways, and a matter which concerned his office coming in queſtion at the ſeſſions, he joined in making the order, and his name was put in the caption. But by *Holt* Ch J. It ought not to be; as if an action be brought by my lord chief juſtice *Trevor* in the court of common pleas, it muſt be before *Edward Nevill*, knight, and his aſſociates, and not before *Thomas Trevor*, &c. And it was quaſhed. 2 *Salk.* 607.

And lord chief juſtice *Raymond*, who had an eſtate in the pariſh of *Abbots Langley*, went off the bench, when an order relating to a pauper there came before the court. *Str.* 1173.

And yet if the juſtice ſhall deal in his own caſe, it ſeems in ſome caſes juſtifiable; as when a juſtice ſhall be aſſaulted, or (in the doing his office eſpecially) ſhall be abuſed to his face, and no other juſtice preſent with him; then it ſeems he may commit ſuch offender until he ſhall find ſureties for the peace or good behaviour, as the caſe ſhall require: But if any other juſtice be preſent, it were fitting to deſire his aid. *Dalt. c.* 173. *Str.* 420, 421.

And by the 16 *G.* 2. *c.* 18. The juſtices may do all things appertaining to their office, ſo far as the ſame relates to the laws for the relief, maintenance, and ſettlement of the poor; for paſſing and puniſhing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithſtanding that they are rated, or chargeable with the rates within any place affected by ſuch their acts. Provided, that this ſhall not impower any juſtice for any county at large, to act in the determination of any appeal to the quarter ſeſſions of ſuch county, from any order, matter, or thing, relating to any ſuch pariſh, townſhip, or place, where ſuch juſtice is ſo charged or chargeable.

And as it is unjuſt in many caſes for the magiſtrate to act in his own cauſe, ſo it is alſo imprudent: To which purpoſe the advice of lord *Coke* is applicable, who upon the occaſion of mentioning a certain judge, who made a ſettlement of his eſtate which was void in law, and brought an action in his own name, which all the other judges, of his own ſhewing in the count, were of opinion did not lie, makes this obſervation, that it is not ſafe for any man (be he never ſo learned) to be of counſel with himſelf in his own cauſe, but to take advice of other great and learned men; and the reaſon he gives is, for that men are generally more fooliſh in their own concerns, than in thoſe of other people. 1 *Inſt.* 377.

Acting without authority.

2. If a juſtice exceed his authority, in granting a warrant, yet the officer muſt execute it, and is indemniſied for ſo doing; but if it be in a caſe wherein he hath no juriſdiction, or in a mat-

ter

ter whereof he has no cognizance, the officer ought not to execute such warrant; so that the officer is bound to take notice of the authority and jurisdiction of the justice. *Cro. Car.* 394. 10 *Co.* 76.

Thus if a justice send a warrant to a constable, to take up one for slander, or the like, the justice hath no jurisdiction in such cases, and the constable ought to refuse the execution of it. *Wood* 138.

But by the 24 *G.* 2. *c.* 44. If the officer in six days after demand shall grant to the party complaining a perusal and copy of the warrant, he shall not be liable to any action, but the justice only.

Whether they may supersede their own proceedings.

3. *T.* 2 *G. Pancras* and *Rumbald.* There was an order of two justices for the removal of a poor person, from the parish of *Pancras* to *Rumbald.* Within three days, the justices, reciting that they were surprized, superseded it, and command the churchwardens to return the former order to be cancelled. It was insisted, that the justices could not issue such a *supersedeas.* But by the court, The *supersedeas* is well sent by the justices, and to prevent the charge of an appeal. And the last order was confirmed. *Str.* 6.

To condemn no man unheard.

4. In summary convictions, the party ought to be heard, and for that purpose ought to be summoned in fact; and if the justice proceed against a person without summoning him, it would be a misdemeanor in him, for which an information would lie. 1 *Salk.* 181. L. *Raym.* 1407. *Str.* 678.

But before an information is granted, the court will first require, that the conviction be removed before them. *Str.* 915.

E. 11 *G.* 2. *K.* and *Harwood.* The defendant being a justice of the peace, was convicted on an information, for a conviction by him made of an alehousekeeper, who was never summoned or heard. It was moved, as of course, to dispense with his appearance. This was opposed, unless there was some reason given, or affidavit made. And upon debate the court resolved, it was not of course; and the defendant afterwards appeared in person. *Str.* 1088.

Refusing to proceed in a cause depending before them.

5. *M.* 9 *G. K.* against *Todd* and others. By the 6 *G. c.* 21. the justices of the peace have a jurisdiction given them in some cases to receive an information, and make their determination, upon a seizure of brandy. Upon information exhibited by the officer of the customs, the fact appeared not to warrant the seizure; but the justice, in favour of the officer refused to dismiss the information, so as the owners might have their brandy again. And now a *mandamus* was moved for, to compel him to determine the matter; which was granted accordingly. *Str.* 530.

H. 7 *G. K.* against *Newton* and others. By the 1 *G. c.* 13. *s.* 11. it is enacted, that two justices may summon any person to take the oaths before them; and if they do not appear, then on oath of serving such summons, the justices are to certify the same to the quarter sessions, where if the party so summoned doth not appear to take the oaths, he shall stand convicted of recusancy.

The

The defendants were juſtices of the peace, and iſſued their ſummons accordingly; but coming afterwards to underſtand, that the party was a gentleman of faſhion, and not ſuſpected to be againſt the government; leſt a tranſaction of this nature ſhould be an imputation upon him, they refuſed to give the proſecutor his oath of the ſervice of ſuch ſummons, that the matter might go no further. And now upon motion againſt them for an *information*, the court declared, that the juſtices had no diſcretionary power to refuſe to put the act in execution, and therefore granted an information againſt them. *Str.* 413.

Authority to appear on the face of their orders.

6. Where a ſpecial authority is given to juſtices out of ſeſſions, it ought to appear in their orders, that that authority was exactly purſued. 2 *Salk.* 475.

To make a record of their proceedings.

7. In all caſes where juſtices may hear and determine out of ſeſſions (*viz.* on their own view, or confeſſion, or oath of witneſſes) the juſtices ought to make a record in writing under their hands of all the matters and proofs; which record notwithſtanding in many caſes they may keep by them. *Dalt. c.* 115.

To eſtreat fines.

8. And if upon ſuch conviction, the offender is to be fined to the king, then the juſtices are to eſtreat ſuch fine, and to ſend the eſtreat into the exchequer, whereby the barons of the exchequer may cauſe the ſaid fine or forfeiture to be levied for the king's uſe. *Dalt. c.* 115.

Whether a juſtice may iſſue his warrant for offences cognizable only in the ſeſſions.

9. Lord *Hale* ſays (contrary to the opinion of Lord *Coke*) that the juſtices out of ſeſſions may iſſue their warrants for apprehending perſons charged of crimes within the cognizance of the ſeſſions, and bind them over to appear at the ſeſſions, altho' the offender be not yet indicted. 1 *H. H.* 579.

But in another place he ſays, this ſeemeth doubtful; and that one thing which ſeems to make againſt it is, that in moſt caſes of this nature, tho' the party were indicted, or an information preferred, yet a *capias* was not the firſt proceſs, but a *venire facias*, and *diſtringas*. 2 *H. H.* 113.

And Mr. *Hawkins* on this point ſaith thus: It ſeems that anciently no one juſtice could legally make out a warrant for an offence againſt a penal ſtatute, or other miſdemeanor, cognizable only by a ſeſſions of two or more juſtices; for that one ſingle juſtice hath no juriſdiction of ſuch offence, and regularly thoſe only who have juriſdiction over a cauſe can award proceſs concerning it: Yet the long, conſtant, univerſal and uncontrolled practice of juſtices of the peace, ſeems to have altered the law in this particular, and to have given them an authority in relation to ſuch arreſts, not now to be diſputed. 2 *Haw.* 84.

Not to truſt to abſtracts and abridgments.

10. Foraſmuch as moſt of the buſineſs of a juſtice of the peace, conſiſteth in the execution of divers ſtatutes, which cannot be ſufficiently abridged but that they will come ſhort of the ſubſtance and body thereof; therefore it ſhall be ſafeſt for the juſtices to have an eye to the ſtatutes at large, and thereby to take their further and better directions, for their whole proceedings: for (as Lord *Coke* obſerveth) abridgments are of good and neceſſary uſe to ſerve as tables, but not to ground any opinion,

opinion, much less to proceed judicially upon them. *Dalt. c.* 173.

11. In like manner, it is not safe for them to trust altogether to the care and judgment of their clerks, in drawing warrants and other instruments; much less, to the skill of parish officers in making copies of orders, and the like: but rather it is advisable to have good printed forms; and instead of copies to be taken upon occasion, to make out duplicates. Not to trust to clerks and transcribers.

VI. Their indemnity and protection by the law in the right execution of their office; and their punishment for the omission of it.

1. A justice of the peace is strongly protected by the law, in the just execution of his office. His indemnity.

Thus, in the first place, he is not to be slandered or abused; as appears by the following report: *M.* 11 *G. Aston* and *Blagrave*. The plaintiff declared, that he was a justice of the peace, and that upon a *colloquium* of him and the execution of his office, the defendant said, *You are a rascal, a villain, and a lyar*. After verdict for the plaintiff it was moved in arrest of judgment, that these words are not *actionable*. It was urged for the plaintiff; There is a great difference between magistrates and common tradesmen: words of the latter, must affect them in their particular way of dealing; but any thing that tends to impeach the credit of the former, is actionable: And although an *indictment* might not lie for these words, as perhaps not tending to a breach of the peace, yet nevertheless they are *actionable*; for in many cases words are actionable, which are not indictable. After consideration, *Pratt* Ch. J. delivered the opinion of the court, That though *rascal* and *villain* were uncertain, yet being joined with *lyar*, and spoken of a justice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. *Str.* 617. L. *Raym.* 1369.

Afterwards, *T.* 15 *G.* 2. *Kent* and *Pocock*. These words spoken of a justice of the peace in the execution of his office, and relating thereto, were held actionable, *viz. Mr.* Kent *is a rogue*; according to the aforesaid case of *Aston* and *Blagrave*. *Str.* 1168.

E. 7 *G. K.* and *Revel*. The defendant was *indicted*, for saying of Sir *Edward Lawrence* a justice of the peace, in the execution of his office, *You are a rogue and a lyar*. It was moved, after verdict for the king, in arrest of judgment, that though the justice might have committed him for the contempt, yet the words are not *indictable*, since it is not to be presumed they would provoke the justice to a breach of the peace, which is the reason why indictments have been held to lie for words. But by the court, The allowing he might be committed, shews they were indictable. It is true, the justice may make himself judge, and punish him immediately; but still, if he thinks proper to proceed less summarily

rily by way of indictment, he may. The true distinction is, that where the words are spoken in the presence of the justice, there he may commit; but where it is behind his back, the party can be only indicted for a breach of the peace. Judgment for the king. *Str.* 420.

T. 14 *G.* 2. *King* and *Pocock*. An *information* was moved for against the defendant, on account of words spoken of Mr. *Kent* a justice of the peace. And the affidavit stated, that in a conversation about a warrant granted by Mr. *Kent*, the defendant asked, if Mr. *Kent* was a sworn justice; and being answered, to be sure he was, else he would not act, the defendant replied, *If he is a sworn justice, he is a rogue and a forsworn rogue.* To this it was objected, that the words were not spoken *to* him in the execution of his office, but only in relation to what he had formerly done: And by the court, There ought to be no information; it is not the same insult and contempt, as if spoken to him in the execution of his office, which would make it a matter indictable. *Str.* 1157.

Nevertheless, according to the distinction in the aforesaid case of *Aston* and *Elegrave*, although an *information* or *indictment* might not lie, yet it doth not follow but that the words were *actionable*; and so it seemeth to have been held in the case last but one abovementioned, of *Kent* and *Pocock*, which seemeth to have been none other than an action brought for this very same offence, after it had been determined that an information would not lie.

In the next place; he is not punishable at the suit of the party, but only at the suit of the king, for what he doth as judge, in matters which he hath power by law to hear and determine without the concurrence of any other; for regularly no man is liable to an action for what he doth as judge: but in cases wherein he proceeds ministerially, rather than judicially, if he acts corruptly, he is liable to an action at the suit of the party, as well as to an information at the suit of the king. 2 *Haw.* 85.

In the next place, by the 7 *J.* *c.* 5. it is enacted, that if any action shall be brought against a justice for any thing done by virtue of his office, he may plead the general issue, and give the special matter in evidence; and if he recovers, he shall have double costs.

And by the 21 *J.* *c.* 12. such action shall not be laid, but in the county where the fact was committed.

And moreover, by the 24 *G.* 2. *c.* 44. it is enacted, that no writ shall be sued out against, or copy of any process at the suit of a subject shall be served on any justice, for any thing done by him in the execution of his office; until notice in writing shall have been given to him, or left at his usual place of abode, by the attorney for the party, one month before the suing out, or serving the same; containing the cause of action, and indorsed with his name and place of abode; for which he shall be intitled to a fee of 20*s.* and no more. *s.* 1.

And

And unless it is proved upon the trial, that such notice was given, the justice shall have a verdict and costs. *s.* 3.

And the justice may at any time, within one month after such notice, tender amends to the party complaining, or to his attorney; and if the same is not accepted, he may plead such tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the court; and if upon issue joined, the jury shall find the amends tendred to have been sufficient, they shall give a verdict for the defendant; and in such case, or if the plaintiff shall be nonsuit, or discontinue, or if judgment be given for the defendant upon demurrer, the justice shall be intitled to the like costs, as if he had pleaded the general issue only: And if the jury shall find that no amends, or not sufficient, were tendred, and also against the defendant on such other plea, they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover with costs. *s.* 2.

And if the justice shall neglect to tender amends, or shall have tendred insufficient, before the action brought, he may by leave of the court before issue joined, pay into court such sum as he shall see fit; whereupon such proceedings and judgment shall be had, as in other actions where the defendant is allowed to pay money into court. *s.* 4.

And no evidence shall be permitted to be given by the plaintiff on trial, of any cause of action, except such as is contained in the notice. *s.* 5.

And no action shall be brought against any constable or other officer, or any person acting by his order and in his aid, for any thing done in obedience to the warrant of a justice, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: And if after compliance therewith, any such action shall be brought, without making the justice, who signed the warrant, defendant; on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable, on proof of such warrant the jury shall find for the constable: And if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found. *s.* 6.

And moreover, no action shall be brought against any justice for any thing done in the execution of his office, unless commenced within six months after the act committed. *s.* 8.

His punishment.

2. On the other hand, it is enacted likewise, by the last mentioned statute, that where the plaintiff in such action against a justice, shall obtain a verdict, and the judge shall in open court certify on the back of the record, that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall have double costs. 24 *G.* 2. *c.* 44. *s.* 7.

Moreover, if a justice will not, on complaint to him made, execute his office, the party grieved may complain to the judges of assize, or to the lord chancellor; and upon examination, if it appeareth that the complaint is true, the chancellor may put him out of the commission, and he shall be punished moreover according to his desert. *Crom.* 7.

But the most usual way of compelling them to execute their office in any case, is by a writ of *mandamus* out of the king's bench.

And in actions brought against justices, they are obliged to shew the regularity of their convictions; and the informations laid before them, upon which the convictions are grounded, must be produced and proved in court. *Sess. Cas. V. I. p.* 372. *Hill* and *Bateman.* 12 *G.*

And by the 18 *G.* 2. *c.* 20. If any person shall act as justice, without a qualification of 100*l.* a year, and without making oath at the sessions, as before is mentioned; he shall forfeit 100*l.* half to the poor, and half to him that shall sue, with full costs.

Other matters relating to the very extensive office of this magistrate, may be found under their proper heads, in almost every title of this book.

Labourers. See Servants.

Landlord and Tenant. See Distress.

Land Tax.

THE land tax acts are annual, but with little variation: The act here inserted is that for this present year, 28 *G.* 2.

I. The first meeting of the commissioners, for issuing precepts to return assessors.

II. The second meeting; charge to the assessors, and therein concerning the manner of laying the assessment.

III. The third meeting: Signing the assessment, with warrant to collect.

IV. Fourth meeting: The appeal.

V. Collecting.

VI. Collector paying to the receiver general.

VII. Receiver paying into the exchequer.

VIII. Duplicates to be transmitted into the exchequer.

IX. General penalty on officers not doing their duty.

X. Indemnity of officers in doing their duty.

I. The first meeting of the commissioners, for issuing precepts to return assessors.

Commissioners.

1. Persons named in the act shall be commissioners to put it in execution. *f.* 6.

But no person shall be capable to act as commissioner in any county or riding at large (the counties of *Merioneth*, *Cardigan*, *Carmarthen*, *Glamorgan*, *Montgomery*, *Pembroke*, and *Monmouth* excepted) unless he be seised of lands, tenements, or hereditaments, which were taxed or did pay, last year, in the same county or riding, for the value of 100*l.* a year of his own estate. *f.* 85.

But this shall not extend to commissioners being inhabitants of cities, boroughs, towns corporate, or cinque ports; or the inns of court, or chancery. *f.* 87.

And no attorney or solicitor, or person practising as such, shall act as commissioner, without having 100*l.* a year, as above. Nor shall any receiver general, or collector of any aid granted to his majesty, act as commissioner. *f.* 87.

And if any commissioner disabled shall presume to act, he shall forfeit 50*l.* to him who shall sue. *f.* 90.

And if there are not a ſufficient number of qualified commiſſioners within any city or place for which commiſſioners are particularly appointed, the commiſſioners of the county may act therein. *ſ.* 81.

To take the oaths.

2. And no commiſſioner ſhall act, until he hath taken the oaths of allegiance, ſupremacy, and abjuration, which ſhall be adminiſtred to him by two or more commiſſioners, on pain of 200*l.* to the king. *ſ.* 45, 46.

Time and place of meeting.

3. And they ſhall meet at the moſt uſual and common places of meeting, on or before *April* 29. *ſ.* 7.

Subdividing.

4. At which firſt meeting, they may ſubdivide themſelves, and the other commiſſioners not then preſent, ſo as three or more be appointed for each diviſion; but ſhall not thereby reſtrain any commiſſioners from acting in any other part of the county. *ſ.* 7.

And ſhall ſet down in writing, who, and what number of the commiſſioners ſhall act in each diviſion, and ſhall deliver a copy thereof to the receiver general. *ſ.* 8.

Receiver general, who.

5. Which receiver general ſhall be appointed by the king, or in purſuance of his directions; and ſhall have a ſalary allowed to him by the lords of the treaſury, not exceeding 2*d.* a pound. *ſ.* 8, 13.

And the death or removal of a receiver general ſhall be notified to two or more commiſſioners, by the commiſſioners for the affairs of taxes, before the time of the firſt quarterly payment. *ſ.* 11.

And the receiver general ſhall give notice under his hand and ſeal of his appointing a deputy (which appointment ſhall be alſo under hand and ſeal) to two or more commiſſioners, in ten days after the firſt meeting, and in ten days after the death or removal of a deputy. *ſ.* 10.

Commiſſioners to ſet down the ſums on each diviſion.

6. And the ſaid commiſſioners, at ſuch firſt meeting, ſhall ſet down in writing the ſums to be charged on each diviſion, in proportion to the ſums which were aſſeſſed thereon by the land tax act, in the fourth year of the reign of *W. & M. ſ.* 7.

Note; There is ſaid to have been a hearing on *Feb.* 10. 1746. before the barons of the exchequer, upon the queſtion, whether the commiſſioners of the land tax, at their general meetings for the city and liberty of *Weſtminſter*, have power to alter the *quota's* in their ſeveral pariſhes, which was continued next day; and that the barons declared, they could not depart from the 4 *W. & M.* and the parliament only could redreſs the aggrieved pariſhes.

But where the proportion upon any diviſion ſhall exceed 2*s.* in the pound, by reaſon of the eſtates of papiſts and nonjurors having been charged double within ſuch diviſion, in the 4 *W. & M.* (the ſums raiſed in that year on every diviſion governing the proportions at preſent) and the ſaid eſtates are not now liable to pay double, by reaſon of their being in the hands of perſons who have taken the oaths; in ſuch caſe two or more commiſſioners may certify the ſame to the barons of the exchequer, who may order

ſo much of the proportion upon ſuch diviſion to be abated, as exceeds the full ſum of 2 *s.* in the pound upon the eſtates therein. *ſ.* 108.

7. Alſo, at ſuch firſt meeting, two or more commiſſioners ſhall direct their ſeveral or joint precepts (A) to ſuch inhabitants, high conſtables, petty conſtables, bailiffs and other officers or miniſters, and ſuch number of them as they ſhall think moſt convenient, to be preſentors and aſſeſſors, requiring them to appear before the ſaid commiſſioners, at ſuch time and place, not exceeding eight days after the date of ſuch precept, as they ſhall appoint. *ſ.* 8. Iſſuing precepts to return aſſeſſors.

They ſhall alſo appoint aſſeſſors and collectors, in privileged and extraparochial places. *ſ.* 43.

But no perſon in a city, borough, or town corporate, ſhall be compelled to be an aſſeſſor or collector out of the limits thereof. *ſ.* 41.

II. The ſecond meeting; charge to the aſſeſſors, and therein concerning the manner of laying the aſſeſſment.

1. Aſſeſſor not appearing, without lawful excuſe to be made out on the oath of two witneſſes; or appearing, and refuſing to ſerve, ſhall forfeit to the king, not more than 5 *l.* nor leſs than 40 *s.* *ſ.* 8. Aſſeſſor not appearing.

2. The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates, duties, and charges, and openly declare the effect of their charge unto them, and how and in what manner they ought to make their aſſeſſments, and how to proceed in the execution of the act. *ſ.* 8. Charge to the aſſeſſors.

Which ſhall be in the manner following; that is to ſay,

3. Towards raiſing 1,018,949 *l.* 14 *s.* 7 *d.* at 2 *s.* in the pound in *Great Britain*, of which *England* ſhall raiſe 994,972 *l.* 14 *s.* and *Scotland* 23,997 *l.* 0 *s.* 7 *d.* the charge upon *perſonal* eſtates ſhall be thus: *viz.* All perſons having an eſtate in goods, wares, merchandizes, or other chattels, or perſonal eſtate whatſoever, within *Great Britain* or without, belonging to or in truſt for them, ſhall pay 2 *s.* in the pound, according to the true yearly value thereof, that is to ſay, for every 100 *l.* of ſuch ready money and debts, and for every 100 *l.* worth of goods, 10 *s.* and after that rate for every greater or leſſer quantity. Excepting and deducting thereout ſuch ſums as they *bona fide* owe, and ſuch debts as the commiſſioners ſhall judge deſperate; and except ſtock upon lands, and houſhold ſtuff, and debts and loans owing from his majeſty. *ſ.* 3. Aſſeſſment on perſonal eſtates.

Every perſon having any publick *office* or employment and their ſubſtitutes ſhall pay 2 *s.* for every 20 *s.* of their ſalaries. Except military officers in the army or navy. *ſ* 3.

Every perſon having an *annuity or penſion* out of the exchequer, or out of any branch of the revenue, or to be paid by any perſon whatſoever, ſhall pay 2 *s.* for every 20 *s.* Except ſalaries charged

upon lands which pay to the full, and except annuities especially exempted by act of parliament. *f.* 3. And except annuities paid to superannuated commission or warrant sea officers, or to the widows of sea officers slain in the service of the crown. *f.* 94. And except money lent or advanced to the government, on the security of the act. *f.* 132. And except turnpike tolls, and the salaries of turnpike officers. *f.* 114.

On real estates. 4. The charge upon *real* estates shall be as follows: —That the intire sum may be raised, all manors, messuages, lands, and tenements; all quarries, mines of coal, tin and lead, copper, mundick, iron, and other mines, iron mills, furnaces, and other iron works; all parks, chaces, warrens, woods, underwoods, coppices; all fishings, tithes, tolls, annuities, and all other yearly profits; and all hereditaments whatsoever—shall be charged with as much equality and indifference as possible, by a *pound rate*, to make up the several sums charged by the act on each county or place. *f.* 4.

Rent charges. 5. Where manors, messuages, lands, tenements, tithes, and hereditaments are incumbred with rent charges, annuities, fee farm rents, rent service or other rents thereupon reserved or charged, the owners thereof may detain out of the payment of the same, a proportionable share of the land tax; provided that such rent or annual payment amount to 20*s.* a year or more. *f.* 5.

Fee farm rents of the crown. 6. Receivers of fee-farm rents, or other chief rents due to the king, or to any person claiming by grant or purchase from him (by which are meant such fee-farm rents only, as are answerable to the king, or have been purchased from the crown by virtue of the statutes of 22 *C.* 2. *c.* 6. and 22 & 23 *C.* 2. *c.* 24. or otherwise, and which before *March* 25. 1693. were not payable to any college, hospital, reader in the universities, or other person exempted) shall allow 2*s.* for every pound of the said rents, and so proportionably for any greater sum than 10*s.* to the party paying the same; on pain of 20*l.* to the party grieved, with full costs. Provided that such deduction or allowance do not exceed the sum assessed on the whole estate out of which such purchased fee-farm rent issues. *f.* 27, 28.

Charities exempted. 7. But nothing herein shall charge any college or hall in *Oxford* or *Cambridge*, or the colleges of *Windsor*, *Eaton*, *Winton*, or *Westminster*, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley*; or any hospital, for or in respect of the sites of the said colleges, halls, or hospitals, or any of the buildings within the walls or limits of the same: Or any master, fellow, or scholar, or exhibitioner of any such college or hall, or any reader, officer, or master of the said universities, colleges, or halls; or any masters or ushers of any schools, for or in respect of any stipends, wages, rents, profits, or exhibitions whatsoever, arising or growing due to them in respect of the said several places or employments: Or any of the lands which before *March* 25. 1693. did belong to the sites of any college or hall, or to *Christ*'s hospital, St. *Bartholomew*, *Bridewell*, St. *Thomas*, and *Bethlehem* hospital in *London* and *Southwark*; or any other hospitals or almshouses

houſes, in reſpect of any rents, or revenues, which before *March* 25. 1693. were payable to them, being to be received and diſburſed for the immediate uſe and relief of the poor of the ſaid hoſpitals and almſhouſes only. *ſ.* 22.

But this ſhall not diſcharge any tenants of any houſes or lands belonging to the ſaid colleges, halls, or hoſpitals, almſhouſes, or ſchools, who by their leaſes or other contracts are obliged to pay and diſcharge all rates, taxes, and impoſitions. *ſ.* 24.

In general, all ſuch lands, revenues, or rents, belonging to any hoſpital or almſhouſe, or ſettled to any charitable or pious uſe, as were aſſeſſed in the 4 *W.* & *M.* ſhall be liable; and no other lands, revenues, or rents, then belonging to any hoſpital or almshouſe, or ſettled to any charitable or pious uſe, ſhall be charged, taxed, or aſſeſſed. *ſ.* 26.

And if there ſhall be any queſtion, how far any lands or tenements, belonging to any hoſpital or almſhouſe, not exempted by name, ſhall be liable, the ſame ſhall be finally determined at the appeal. *ſ.* 25.

8. No poor perſon ſhall be charged with, or liable to the pound rate, whoſe lands, tenements, or hereditaments are not of the full yearly value of 20*s.* in the whole. *ſ.* 75. Poor exempted.

9. The commiſſioners ſhall aſſeſs the aſſeſſors. *ſ.* 40. Who ſhall aſſeſs the aſſeſſors.

10. And all places, conſtablewicks, diviſions, and allotments ſhall be aſſeſſed in ſuch county, hundred, rape, wapentake, conſtablewick, diviſion, place, or allotment, as they have been uſually aſſeſſed in. *ſ.* 23. In what places or diviſions perſons ſhall be aſſeſſed.

Every perſon, whether he hath a certain place of reſidence or not, ſhall be rated for his *perſonal* eſtate, at the place where he is *reſident* at the time of the execution of the act: And if he is out of the realm at the time of the aſſeſſment, he ſhall be rated at the place where he was laſt abiding in the realm. *ſ.* 48.

H. 7 *G. Purret* and *Wecks.* At *Taunton* aſſizes, before *Price*, baron of the exchequer. The plaintiff was an exciſeman, and lived in the county of *Devon*, and executed his office in ſeveral pariſhes in that county, and alſo in a pariſh that extended into *Somerſetſhire*. And the commiſſioners of that county, apprehending they had a concurrent power with the commiſſioners of *Devon*, to tax him for his ſalary, on account that he executed his office in their county, they tax him accordingly, and for want of payment diſtrain. For which, treſpaſs was brought; and ruled, that it well lay; for though he rides about to the publick houſes in that county, yet he muſt be ſaid to keep his office in the town where he lives and hath his books, and there he was only taxable. *Str.* 417.

And every houſholder ſhall, on demand of the aſſeſſors, give an account of the names and qualities of ſuch perſons as ſhall ſojourn and *lodge* in their houſes: on pain of 5 *l.* to be recovered as the other penalties. *ſ.* 52.

In a *city or town corporate*, perſons having their houſe in one pariſh or ward, and goods in another, ſhall be aſſeſſed for the whole where they inhabit. *ſ.* 30.

But if a perſon hath goods in any *other county* than where he is reſident, or had his laſt reſidence; he may be aſſeſſed for ſuch goods in the county where they are. *ſ.* 49.

Members of parliament ſhall be aſſeſſed for their perſonal eſtate, at their manſion houſes or places, where they moſt uſually reſide during the interval of parliament. *ſ.* 83.

Officers ſhall pay for the profits of their offices or employments, where the office is executed, and not where the ſalary is payable: But all other *penſions*, ſtipends, and annuities (not charged upon lands) ſhall be aſſeſſed where they are payable. *ſ.* 47, 48.

Officers in the receipt of the exchequer, and other publick offices, ſhall on requeſt of the aſſeſſors, deliver *gratis* true liſts or accounts of all penſions, annuities, ſtipends, or other annual payments, and all fees, *ſalaries*, and other allowances; and if the tax thereupon ſhall not be afterwards paid, it ſhall be ſtopped in ſuch offices, and an account thereof ſhall be given to the collectors. *ſ.* 29.

And deputies in office ſhall pay for their principals. *ſ.* 102.

If a perſon, having two places of reſidence or otherwiſe, ſhall be *doubly charged* for any perſonal eſtate, office, or otherwiſe; then on certificate of two commiſſioners for the place of his laſt perſonal reſidence, under hand and ſeal, of the ſum charged upon him there, and on oath made of ſuch certificate before a juſtice of the place where the certificate ſhall be made, the perſon ſo doubly charged ſhall be diſcharged elſewhere. *ſ.* 50.

If any perſon who ought to be taxed for his perſonal eſtate, ſhall, by changing his place of reſidence, or by any other fraud or covin eſcape from the taxation, and the ſame be proved before two commiſſioners or one juſtice where ſuch perſon reſideth, within one year after ſuch tax made; he ſhall pay treble, to be levied on his lands and goods, on certificate thereof made into the exchequer by ſuch juſtice or commiſſioners. *ſ.* 51.

Every perſon ſhall be aſſeſſed for *lands*, where they lie, and not elſewhere. *ſ.* 49.

And ſuch tax ſhall be paid by the tenant, who ſhall deduct it out of his rent: and if any difference ſhall ariſe between landlord and tenant, the commiſſioners, or two of them, ſhall ſettle the ſame. *ſ.* 15, 16.

But contracts between landlord and tenant, or other perſons, about paying taxes ſhall not be avoided thereby. *ſ.* 32.

Foreign miniſters.

11. The tax on foreign miniſters houſes ſhall be paid by the landlord. *ſ.* 42.

Papiſts and nonjurors.

12. Every papiſt, or reputed papiſt, being 18 years of age, and upwards, who ſhall not have taken the oaths of allegiance and ſupremacy, 1 *W. c.* 8. ſhall pay double; unleſs he take the ſaid oaths, before two commiſſioners in ten days after the firſt meeting. *ſ.* 55, 56.

Alſo every perſon (whether papiſt or not) being 18 years old and upwards, and not having taken the ſaid oaths, and upon ſummons under hand and ſeal of two commiſſioners, refuſing to take them, or neglecting to appear, ſhall pay double in like manner. *ſ.* 57, 58.

But

But quakers refuſing to take the oaths, ſhall not pay double, if they ſhall make and ſubſcribe the declaration of fidelity in the act of 1 *W. c.* 18.

13. And at and after the charge given, the commiſſioners ſhall take care, that warrants be iſſued forth, and directed to two at leaſt of the moſt able and ſufficient inhabitants, appointing and requiring them to be aſſeſſors (B); and ſhall alſo therein appoint a day and place for the ſaid aſſeſſors to appear before them, and to bring in their aſſeſſments in writing. *ſ.* 8. Appointing a time to bring in their aſſeſſments.

III. The third meeting: Signing the aſſeſſment, with warrant to collect.

1. The aſſeſſor, after he is appointed, neglecting or refuſing to ſerve, or not appearing at ſuch third meeting, without lawful excuſe to be proved on oath of two witneſſes, or not performing his duty, ſhall forfeit to the king any ſum not exceeding 40 *l.* to be levied as the rates, and charged to the receiver general. *ſ.* 8. Penalty on the aſſeſſor not appearing.

2. At ſuch third meeting, the aſſeſſors ſhall deliver two duplicates of the aſſeſſment in writing, ſigned by them, to the commiſſioners. *ſ.* 8. Duplicates to be delivered in.

3. And ſhall then alſo return the names of two or more able and ſufficient perſons, living within the places where they ſhall be chargeable reſpectively, to be collectors; for whom the pariſh or place ſhall be anſwerable. *ſ.* 8. Collectors names to be returned.

4. Then three or more commiſſioners ſhall ſign and ſeal two duplicates of the aſſeſſments, and deliver one of them to the collectors (whom they ſhall nominate and appoint) with warrant to the ſaid collectors to collect the ſame. (C) *ſ.* 8. Signing the duplicates.

5. And they ſhall at the ſame time give notice to the collectors, at what time and place appeals may be heard and determined: which ſhall be at leaſt 30 days from the time of ſigning and ſealing and delivering the duplicates to the collectors. *ſ.* 8. Appointing the appeal day.

IV. Fourth meeting: The appeal.

1. Every collector ſhall, within ten days after the receipt of the duplicates, cauſe publick notice to be given in every pariſh church or chapel within his diſtrict, immediately after divine ſervice on the lord's day (if any ſuch divine ſervice ſhall be performed therein within that time) of the time and place ſo appointed by the commiſſioners for hearing and determining appeals: And ſhall alſo, on the ſame day, cauſe the like notices to be fixed in writing on the door of ſuch church or chapel. *ſ.* 8. Notice of the appeal day to be given in the church.

2. And the collectors ſhall permit the duplicates to be inſpected, at all ſeaſonable times of the day, without fee. *ſ.* 8. Collector ſhall ſuffer the duplicates to be inſpected.

3. Every perſon intending to appeal, ſhall give notice thereof in writing to one or more aſſeſſors, that they may attend, if they think fit, to juſtify the aſſeſſment. *ſ.* 8. Appellant to give notice in writing.

4. And in caſe of any controverſy in apportioning the aſſeſſments, which concern any commiſſioner, ſuch commiſſioner concerned Commiſſioner intereſted to withdraw.

cerned therein in his own right, or in right of any other for whom he ſhall act as ſteward, agent, attorney, or ſolicitor, ſhall have no voice, but ſhall withdraw until it be determined; on pain of any ſum not exceeding 20*l.* to be levied and paid as the other fines. *ſ.* 20.

Relief in caſe of overcharge.

5. And where it appears by proof upon oath, that lands are overcharged by the pound rate, the commiſſioners, or three of them, at the appeal, may make abatement, and cauſe the ſum abated to be reaſſeſſed upon the whole hundred, lathe, wapentake, or other diviſion where the overcharges happen, altho' the pound rate of 2*s.* in the pound be thereby exceeded; or upon any perſon therein undercharged; ſo that the whole ſum charged on ſuch diviſion be fully anſwered. *ſ.* 79.

Appeal determined, final.

6. And appeals once heard and determined, on the appeal day, ſhall be final, without any farther appeal upon any pretence whatſoever; and without further trouble or ſuit in law, either in the king's bench or any other court. *ſ.* 8, 20.

V. Collecting.

Demand.

1. The collectors ſhall make demand of the parties themſelves if they can be found, or elſe at the place of their laſt abode, or upon the premiſſes charged. *ſ.* 9.

Diſtreſs.

2. And if any perſon ſhall refuſe or neglect to pay to the collector on demand, he may levy the ſame by diſtreſs and ſale of the goods of the perſon ſo neglecting or refuſing:

And where any refuſal, neglect, or reſiſtance ſhall be made, he may (calling the conſtable to his aſſiſtance) break open in the day time any houſe, and by warrant of two commiſſioners any cheſt, trunk, box, or other thing, where any ſuch goods are:

Or he may diſtrain upon the meſſuages, lands, tenements, and premiſſes; and the diſtreſs ſo taken, may keep for four days, at the charges of the owner; and if not paid in four days, then the diſtreſs ſhall be appraiſed by two inhabitants or other ſufficient perſons, and ſold by the collector, returning the overplus immediately (if any be) over and above the tax and charge of taking and keeping the diſtreſs. *ſ.* 15.

And if any difference ſhall ariſe upon taking the diſtreſs, the ſame ſhall be determined and ended by two commiſſioners. *ſ.* 15.

In the caſe of the *India company* and *Skinner*, *T.* 7 *W.* The defendant pleaded the general iſſue; and upon evidence it was objected, that the warrant was to break open in caſe of oppoſition; and this warrant was granted before any default; which ought not to be, no more than a warrant to diſtrain for poor rates before demand made; for the firſt ought to be only a confirmation of the aſſeſſment, and afterwards upon refuſal a new warrant is to be made for diſtreſs. And *Holt* Ch. J. ſaid, that ſtrictly it was ſo; but the practice having been, in this caſe of taxes, to grant ſuch a conditional warrant to diſtrain, *communis error facit jus*. *Caſe of S.* 250.

However it is ſafer not to leave the non-feaſance of the party to the judgment of the officers; but firſt to iſſue warrants impowering

powering them to collect, as the act directeth; and then on proof of their refusal, to grant a warrant to distrain.

3. If any person shall refuse or neglect to pay for ten days after demand, or shall convey his goods so that distress cannot be made, he shall be committed (unless he is a peer) by warrant of two commissioners to the common gaol, until payment of the money assessed, and of the charges for bringing in the same. *s.* 15. Commitment for want of distress.

4. Arrears may be levied by the present commissioners, in the same manner as the present tax. *s.* 112. Levying arrears.

And where lands or houses are unoccupied, and no distress can be found thereon, the collectors for the time being may distrain at any time after; and shall distribute the money to those who contributed to make it up. *s.* 36.

5. Where woodlands are assessed, and no distress can be had, the collector or constable by warrant of two commissioners, at seasonable times of the year, may cut and sell wood (except timber trees) to pay the tax. *s.* 37. Tax on woodlands how to be levied.

6. If the tax upon any tithes, tolls, profits of markets, fairs, or fisheries, or any other annual profits, not distrainable, shall not be paid in six days after demand, the collector, constable, or other officer, by warrant of two commissioners, may seize and sell so much thereof, wheresoever found, as shall be sufficient to pay the tax and charges accasioned by non payment. *s.* 38. Tax on tithes, tolls, and other annual profits, how to be levied.

VI. Collector paying to the receiver general.

1. The collector shall pay the money received, to the receiver general or his deputy, quarterly; on or before *June* 24. *Sep.* 29. *Dec.* 25. and *March* 25. at such time and place as two commissioners shall appoint; so as the whole sums due be answered by the respective quarterly pay days; and so as the collector shall not be obliged to travel above ten miles from his usual place of abode. *s.* 9, 10, 12, 80. Collector to pay to the receiver.

2. And if the receiver general shall wilfully neglect to attend at the time and place appointed, he shall forfeit 100*l.* half to the king, and half to him who shall sue. *s.* 80. Receiver neglecting to attend.

3. The receiver general, or his deputy, shall give a receipt *gratis*. *s.* 10. Receiver to give receipts.

4. And at every time and place appointed by the commissioners for the collectors to pay the money to the receiver general, he shall deliver a list of the money received by him, to such person as two or more commissioners shall under their hands appoint; on pain of 20*l.* to be paid into the exchequer, as the fines on assessors and collectors. *s.* 103. Receiver to deliver lists of money received.

5. And the collectors shall have 3*d.* in the pound, for collecting and giving receipts, which they may detain out of the last payment. *s.* 14. Collector to have 3 d. a pound.

6. If the collector shall keep in his hands any part of the money by him collected, longer than the time limited, or shall pay any part of it to any other person than to the receiver general, or his deputy, he shall forfeit 40*l.* *s.* 76. Collector making default.

And

And if any collector shall refuse or neglect to pay any sum by him received, or shall detain in his hands any money by him received, and not pay the same as the act directs, two commissioners may imprison him, or may seize his estate as well freehold as copyhold, and all other estate both real and personal, to him belonging, or which shall come to his heirs, executors, or administrators. Which said commissioners may appoint a general meeting of the commissioners, and shall give publick notice thereof at least six days before: And the commissioners at such general meeting may sell such estates, or any part thereof, for payment. *s.* 18.

And the commissioners at any general meeting may summon collectors, who have fraudulently converted land tax money to their own use, and cause them to pay the same, to make up the deficiency if there is any in that place; and if there is no deficiency, then to discharge so much of the proportion charged on such place, as that money doth amount to: And if such collector shall neglect or refuse so to pay, the commissioners may imprison him, and seize and sell his estate for payment. *s.* 109, 110, 111.

And persons distraining upon collectors, may keep in their hands so much charges for making and keeping, or otherwise relating to the distress, as two commissioners, who ordered the distress, shall judge reasonable. *s.* 104.

Receiver to certify defaults.

7. And in case of failure in payment, the receiver general shall certify the same into the exchequer; and the place or persons neglecting shall be liable to process. *s.* 98.

Deficiency to be reassessed.

8. If the full proportion upon any division shall not be fully assessed, levied, and paid; or if any share thereof shall be assessed upon any person not able to pay, or upon any empty or void house or land, where it cannot be collected or levied; or if thro' wilfulness, neglect, mistake, or accident, the assessment shall not be paid to the receiver general or his deputy; the same shall be reassessed upon such division. *s.* 16.

Receiver falsly returning arrears.

9. If the receiver general shall return any persons in arrear who have paid, he shall forfeit treble damages to the party, and double the sum unjustly certified, to the king. *s.* 39.

And no receiver shall return any place in arrear, after three years; but the same shall be a debt on him and his securities. *s.* 105.

VII. Receiver paying into the exchequer.

Receiver robbed.

1. No receiver general, or any of his agents, shall maintain an action against the hundred, on account of being robbed in carrying the money; unless they be together in company, and in number three at least. *s.* 113.

Paying into the exchequer.

2. And the receiver general, within 20 days after receipt, shall pay the money into the exchequer. *s.* 13.

Which if he shall pay otherwise than into the exchequer, or not within the time limited, he shall forfeit 500*l.* to him who shall sue. *s.* 76.

VIII. Dupli-

VIII. Duplicates to be tranſmitted into the exchequer.

1. The commiſſioners on or before *Aug.* 8. or in 20 days after (all appeals being firſt determined) ſhall cauſe to be delivered to the receiver general or his deputy, a ſchedule or duplicate in parchment under their hands and ſeals, containing the whole ſum aſſeſſed upon each pariſh or place; and ſhall tranſmit a like ſchedule or duplicate into the king's remembrancer's office in the exchequer; for which the remembrancer, or his deputy, ſhall give a receipt *gratis*, on pain of 10*l.* *ſ.* 8. Duplicates to be tranſmitted.

2. In the ſchedules to be tranſmitted into the king's remembrancer's office, the commiſſioners ſhall diſtinguiſh and ſet down the groſs ſum charged in any diviſion for double taxes, that it may be known how much the double taxes amount to in ſuch diviſion. *ſ.* 116. Double taxes to be ſpecified therein.

3. All which being done, the commiſſioners clerks, for their trouble in writing the aſſeſſments, duplicates, and copies, and all warrants, orders, and inſtructions relating thereunto, ſhall have 1 *d.* ½ in the pound, to be paid by the receiver general, according to the warrant of two commiſſioners. *ſ.* 14. Commiſſioners clerks to have 1 d. 2 q. in the pound.

IX. General penalty on officers not doing their duty.

1. If any aſſeſſor, collector, or other perſon, ſhall wilfully neglect or refuſe to perform his duty, or ſhall be guilty of fraud or abuſe, three commiſſioners may fine him not exceeding 40*l.* which ſhall not be taken off, but by a majority of the commiſſioners who impoſed it. To be levied by warrant of the ſaid commiſſioners by diſtreſs and ſale; in default of diſtreſs (if not a peer) to be committed to priſon by two commiſſioners till payment. *ſ.* 17. General penalty.

2. And all fines ſhall be paid to the receiver general, and paid by him into the exchequer, and ſhall be inſerted in the duplicates to be tranſmitted into the office of the king's remembrancer. *ſ.* 17. To be paid to the receiver general.

Other penalties are annexed to the ſeveral offences.

X. Indemnity of officers in doing their duty.

1. No commiſſioner, aſſeſſor, or collector, ſhall be liable to any other penalties than thoſe inflicted by the act. *ſ.* 44. Officer liable to no penalties but thoſe of the act.

2. And perſons ſued for any thing done in the execution hereof, may plead the general iſſue, and have treble coſts. *ſ.* 36. Treble coſts.

A. Precept

A. Precept to the high conſtables to return aſſeſſors.

Weſtmorland. { To *John Bowneſs*, gentleman, high conſtable of the Eaſt Ward within the ſaid county.

WE *the commiſſioners of the land tax for the ſaid county, whoſe names are hereunto ſet and ſeals affixed, do hereby require you forthwith upon the receipt hereof, to iſſue out your warrants to all the petty conſtables within your ſaid Ward, in the form or to the effect here under following; that is to ſay,*

Weſtmorland Eaſt Ward. { To the conſtable of ———

BY *virtue of a precept from the commiſſioners of the land tax for the ſaid county to me directed, you are hereby required forthwith to give notice to the laſt collectors of the ſaid duty within your conſtablewick, that they and every of them do perſonally appear before the ſaid commiſſioners at* ——— *in* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the ſame day, in order to be appointed aſſeſſors of the ſaid duty for this preſent year, and at the ſame time to receive their charge, how and in what manner to make their aſſeſſments, and otherwiſe how to proceed in the execution of their ſaid office. And be you then there, to certify what you ſhall have done in the execution hereof. Herein fail you not. Given under my hand the* ——— *day of* ——— *in the year of our lord* ———

John Bowneſs, *High Conſtable.*

And this you the ſaid high conſtable are in no wiſe to omit, on the peril that ſhall enſue thereof. Given under our hands and ſeals the ——— *day of* ——— *in the year of our lord* ———

B. Appointment of aſſeſſors of the land tax, with their charge.

Weſtmorland. BY *virtue of an act for granting an aid to his majeſty by a land tax, at two ſhillings in the pound, for the ſervice of this preſent year, We the commiſſioners of the ſaid duty for the county aforeſaid, do hereby nominate and appoint* ——— *to be aſſeſſors of the ſaid duty, within the townſhip of* ——— *in the county aforeſaid. And we do hereby require you the ſaid aſſeſſors, to make your aſſeſſment for the ſame, according to the proportions of the laſt aſſeſſment for the ſaid duty within your ſaid townſhip. And of your ſaid aſſeſſment you are to make out two duplicates in writing, and ſign the ſame with your names; and the ſame, together with the names of two or more able and ſufficient inhabitants to be collectors, you are to deliver unto us at* ——— *in* ——— *in the county aforeſaid, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the ſame day. And you are to give notice to the ſaid perſons to be by you returned for collectors, that they alſo do appear at the ſame time and place, to receive their appointment and charge. Given under our hand and ſeals, the* ——— *day of* ——— *in the year of our lord* ———

C. Appoint-

C. Appointment and charge of the collectors of the land tax, with warrant to collect.

Westmorland. WE *the commissioners of the land tax for the said county, whose names are hereunto set, and seals affixed, do hereby nominate and appoint* ——— *to be collectors of the land tax for the township of* ——— *in the said county for this present year; and do hereby impower them to demand, collect, and receive the same. And you the said collectors are hereby required, within ten days after your receipt hereof, to cause publick notice to be given in the church or chapel immediately after divine service on the lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessment for the same, will be finally heard and determined by the said commissioners, at* ——— *in* ——— *in the said county, on the* ——— *day of* ——— *now next ensuing. And if after the time of such determination, any person shall refuse or neglect to pay the same upon demand, you are hereby required forthwith to give notice unto us thereof, that such further proceedings may be had therein, as to law doth appertain. And the same, when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to say,* ———*deducting out of the last payment thereof* 3 d. *for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and seals the* ——— *day of* ——— *in the year of our lord* ———

Larceny.

LARCENY comes from *latrocinium*, *latrociny*; and by contraction, or rather abuſe, *larceny*. 3 *Inſt.* 107.

I. Of grand larceny in general.
II. Of petit larceny.
III. Larceny from the perſon.
IV. Larceny from the houſe.
V. Larceny in a booth or tent.
VI. Larceny on a navigable river.
VII. Other larcenies.
VIII. Receiving ſtolen goods.
IX. Advertiſing or receiving a reward for helping to ſtolen goods.
X. Charges of proſecution and conviction how to be paid.

I. Of grand larceny in general.

Grand larceny is *a felonious and fraudulent taking, and carrying away, by any perſon, of the mere perſonal goods of another, above the value of* 12 d. 1 Haw. 189.

Felonious and fraudulent] Felony is always accompanied with an evil intention, and therefore ſhall not be imputed to a mere miſtake or miſanimadverſion; as where perſons break open a door, in order to execute a warrant, which will not juſtify ſuch a proceeding; for in ſuch caſe there is no felonious intention. 1 *Haw.* 65.

For it is the mind that makes the taking of another's goods to be felony, or a bare treſpaſs only; but becauſe the variety of circumſtances is ſo great, and the complications thereof ſo mingled that it is impoſſible to preſcribe all the circumſtances evidencing a felonious intent, or the contrary; the ſame muſt be left to the due and attentive conſideration of the judge and jury; wherein the beſt rule is, in doubtful matters rather to incline to acquittal than conviction. Only in general it may be obſerved, that the ordinary diſcovery of a felonious intent is, if the party doth it ſecretly, or being charged with the goods denies it. 1 *H. H.* 509.

Taking] All felony includes treſpaſs; and every indictment muſt have the words *feloniouſly took*, as well as *carried away*: from whence it follows, that if the party be guilty of no treſpaſs in taking the goods, he cannot be guilty of felony in carrying them away. 1 *Haw.* 89.

And

And from this ground it hath been holden, that one who finds the goods which I have loſt, and converts them to his own uſe, with intent to ſteal them, is no felon; and *a fortiori* therefore it muſt follow, that one who has the actual poſſeſſion of my goods by my delivery, for a ſpecial purpoſe, as a carrier who receives them, in order to carry them to a certain place; or a taylor who has them in order to make me a ſuit of cloaths; or a friend who is intruſted with them to keep for my uſe, cannot be ſaid to ſteal them, by imbezilling of them afterwards. 1 *Haw.* 89.

But yet it hath been reſolved, that if a carrier open a pack, and take out part of the goods; or a weaver who has received ſilk to work, or a miller who has corn to grind, take out part thereof, with intent to ſteal it, it is felony. 1 *Haw.* 90.

So where a man's goods are in ſuch a place, where ordinarily they are or may be lawfully placed, and a perſon takes them, with intent to ſteal them, it is felony; and the pretence of finding muſt not excuſe. 1 *H. H.* 506.

So if a man's horſe be going upon a common where he has a right to put him, and another take the horſe with intent to ſteal him, it is no finding, but a felony. 1 *H. H.* 506.

So alſo, if the horſe ſtray into a neighbour's ground or common, it is felony in him that ſo takes him. But if the owner of the ground takes him doing damage, or the lord ſeize him as a ſtray, tho' perchance he hath no title ſo to do, yet here is not a felonious intention, and therefore cannot be felony. 1 *H. H.* 506.

If one man's ſheep ſtray into another man's flock, and that other perſon drives it along with his ſtock, or by bare miſtake ſhears it, this taking is not a felony; but if he knew it to be another's, and marks it with his mark, this is an evidence of felony. 1 *H. H.* 507.

Lord *Hale* ſays, If one man take another man's hay or corn, and mingles it with his own heap or ſtock; or take another man's cloth, and embroider it with ſilk or gold; ſuch other perſon may retake the whole heap of corn, or cock of hay, or garment and embroidery alſo; and this retaking is no felony, nor ſo much as a treſpaſs. 1 *H. H.* 513.

It ſeems generally agreed, that one who has the bare charge, or the ſpecial uſe of goods, but not the poſſeſſion of them; as a ſhepherd who looks after my ſheep, or a butler who takes care of my plate, or a ſervant who keeps a key to my chamber, or a gueſt who has a piece of plate ſet before him in an inn, may be guilty of felony in fraudulently taking away the ſame. 1 *Haw.* 90.

By the 21 *H.* 8. *c.* 7. Servants imbezilling their maſters goods, to the value of 40*s.* or above (altho' this taking be no treſpaſs) ſhall be puniſhed as felons. But this ſhall not extend to any apprentice, nor to any perſon within 18 years of age.—And by the 12 *An. c.* 7. If it is taken out of an houſe, or outhouſe, it is felony without benefit of clergy.

Alſo by the 3 *W. c.* 9. If any perſon ſhall take away, with intent to ſteal, or imbezil, any furniture out of his lodging, he ſhall be guilty of felony.

And

And carrying away] To make it come within this deſcription, it ſeemeth that any the leaſt removing of the thing taken, from the place where it was before, is ſufficient for this purpoſe, tho' it be not quite carried off: And upon this ground, the gueſt, who having taken off the ſheets from his bed, with an intent to ſteal them, carried them into the hall, and was apprehended before he could get out of the houſe, was adjudged guilty of larceny: So alſo was he, who having taken an horſe in a cloſe, with an intent to ſteal him, was apprehended before he could get him out of the cloſe. 1 *Haw.* 93.

By any perſon] A wife may be guilty thereof, by ſtealing the goods of a ſtranger; but not by ſtealing the goods of her huſband. 1 *Haw* 93.

It is ſaid by Mr. *Dalton* and others, that it is no felony for one reduced to extreme neceſſity, to take ſo much of another's victuals, as will ſave him from ſtarving; but Lord *Hale* ſays, that this rule by the law of *England* is falſe; and therefore that if a perſon, being under neceſſity for want of victuals or cloaths, ſteals another man's goods, it is felony. 1 *H. H.* 54.

If one ſtealeth another man's goods, and afterwards another ſtealeth the ſame from him; the owner may charge the firſt or ſecond felon at his choice. *Dalt. c.* 162.

Of the mere perſonal goods] *Mere*; for if the perſonal goods ſavour any thing of the realty, it cannot be larceny. And therefore they ought to be no way annexed to the freehold; therefore it is no larceny, but a bare treſpaſs, to ſteal corn or graſs growing, or apples on a tree; but it is larceny to take them being ſevered from the freehold, as wood cut, graſs in cocks, ſtones digged out of the quarry; and this, whether they are ſevered by the owner, or even by the thief himſelf, if he ſever them at one time, and then come again at another time and take them. 1 *Haw.* 93. 1 *H. H.* 510.

But by the 4 *G.* 2. *c.* 32. Every perſon who ſhall ſteal, rip, cut, or break, with intent to ſteal, any lead, iron bar, iron gate, iron paliſadoe, or iron rail, fixed to any building, or in any garden, orchard, court-yard, fence, or out-let belonging to any building; he, his aiders and abettors, and alſo all who ſhall knowingly buy or receive the ſame, ſhall be guilty of felony, and be tranſported for ſeven years.

Alſo the goods ought to have ſome worth in themſelves, and not to derive their whole value from the relation they bear to ſome other thing, which cannot be ſtolen; as paper, or parchment, on which are written aſſurances concerning lands, or obligations, or covenants, or other ſecurities for a debt, or other *choſe* in action. 1 *Haw.* 93.

But by the 8 *H.* 6. *c.* 12. If any perſon ſhall ſteal any record or proceſs belonging to any of the courts at *Weſtminſter*, by reaſon whereof any judgment ſhall be reverſed, he ſhall be guilty of felony.

And

And by the 2 *G.* 2. *c.* 25. If any perſon ſhall ſteal, or take by robbery, any exchequer orders or tallies, or other orders, intitling any other perſon to any annuity or ſhare in any parliamentary fund; or any exchequer bills; bank notes; *South Sea* bonds; *Eaſt India* bonds; dividend warrants of the bank, *South Sea* company, *Eaſt India* company, or any other company; bills of exchange; navy bills or debentures; goldſmiths notes for payment of money; or other bonds or warrants, bills, or promiſſory notes for payment of money; he ſhall be guilty of felony, with or without the benefit of clergy, in the ſame manner as he would have been, if he had ſtolen or taken by robbery any other goods of like value with the money due thereon: But not to work corruption of blood.

The goods ought alſo not to be things of a baſe nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howſoever they may be valued by the owner, ſhall never be ſo highly regarded by the law, that for their ſakes a man ſhall die: But yet the ſtealing of an hawk, knowing it to be reclaimed, is felony by the common law and by ſtatute, in reſpect of that very high value which was formerly ſet upon that bird. 1 *Haw.* 93.

Of another] It ſeems agreed, that the taking of goods, whereof no one had a property at the time, cannot be felony; and therefore that he who takes any treaſure trove, or a wreck, waif, or ſtray, before they have been ſeized by the perſons who have a right thereto, is not guilty of felony, but ſhall be puniſhed by fine. 1 *Haw.* 94.

But yet the taking of theſe muſt be, where the party that takes them, really believes them to be ſuch, and colours not a felonious taking under ſuch a pretence; for then every felon would cover his felony under that pretence. 1 *H. H.* 506.

Neither ſhall he who takes fiſh in a river or other great water, wherein they are at their natural liberty, be guilty of felony; as he may be, who takes them out of a trunk or pond. 1 *Haw.* 94.

Upon the like ground it ſeems clear, that a man cannot commit felony, by taking hares or conies in a warren, or old pigeons being out of the houſe; but it is agreed, that one may commit larceny, in taking ſuch or any other creatures *feræ naturæ*, if they be fit for food, and reduced to tameneſs, and known by him to be ſo. 1 *Haw.* 94.

Alſo it is ſaid, that there may be felony in taking goods, the owner whereof is unknown; in which caſe, the king ſhall have the goods, and the offender ſhall be indicted for taking the goods of a perſon unknown; and it ſeems, that in ſome caſes the law will rather feign a property, where in ſtrictneſs there is none, than ſuffer an offender to eſcape. 1 *Haw.* 94.

He who ſteals goods belonging to a pariſh church, may be indicted for ſtealing the goods of the pariſhioners. 1 *Haw.* 94.

And it hath been adjudged, that he who takes off a ſhroud from a dead corps, may be indicted as having ſtolen it from him, who was the owner thereof when it was put on; for a dead man can have no property. 1 *Haw.* 94.

Above the value of 12 d.] The learned editor of *Hale*'s hiſtory of the pleas of the crown obſerves, that in former times, tho' the puniſhment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ranſom; but in the 9 *H.* 1. it was enacted, that whoever was convicted of theft ſhould be hanged, and the liberty of redemption was entirely taken away; which law continues to this day. But conſidering the alteration in the value of money, the ſeverity of it is much greater now than it was then; for 12 *d.* would then purchaſe as much as 40 *s.* will now: and yet a theft above the value of 12 *d.* is ſtill liable to the ſame puniſhment. Upon which Sir *H. Spelman* juſtly obſerves, that while all things elſe have riſen in their value, and grown dearer, the life of man is become much cheaper; and from hence takes occaſion to wiſh, that the ancient tenderneſs of life were again reſtored. 1 *H. H.* 12.

And Lord *Coke*, obſerving that when the ſtatute of the 3 *Ed.* 1. was made, which makes ſtealing of goods above the value of 12 *d.* to be grand larceny, the ounce of ſilver was at the value of 20 *d.* and now it is at the value of 5 *s.* and above, draws this concluſion, that the thing ſtolen ought to be reaſonably valued; that is, having reſpect to the great alteration in the value of money. 2 *Inſt.* 189, 190. For 20 *s.* were then a real *pound* weight; which name we ſtill retain, although the weight is much diminiſhed.

If two perſons or more, together, ſteal goods above the value of 12 *d.* every one of them is guilty of grand larceny; for each perſon is as much an offender as if he had been alone. 1 *Haw.* 95.

Alſo it ſeems the current opinion of all the old books, that if one at ſeveral times ſteal ſeveral parcels of goods, each under the value of 12 *d.* but amounting in the whole to more, from the ſame perſon, and be found guilty thereof on the ſame indictment, he ſhall have judgment of death as for grand larceny; but this ſeverity is ſeldom practiſed. 1 *Haw.* 95.

II. Of petit larceny.

Petit larceny agrees with grand larceny in the ſeveral particulars abovementioned, except only the value of the goods (and except as hereafter followeth); ſo that wherever an offence would amount to grand larceny, if the thing ſtolen were above the value of 12 *d.* it is petit larceny, if it be but of that value or under. 1 *Haw.* 95.

And if one be indicted for ſtealing goods to the value of 10 *s.* and the jury find ſpecially, as they may, that he is guilty, but that the goods are worth but 10 *d.* he ſhall not have judgment of death, but only as for petit larceny. 1 *Haw.* 95.

In petit larceny there can be no acceſſaries, neither before nor after. 1 *H. H.* 530.

By the 3 *Ed.* 1. *c.* 15. Perſons indicted of petit larceny, if they were not guilty of ſome other larceny aforetime, are bailable

by juſtices of the peace. And it ſeems to be agreed, that there is no neceſſity, that ſuch perſons be of good reputation: But yet if the crime be open and manifeſt, it ſeems that they ought not to be bailed; but if there be any colour of probability for their innocence, it ſeems moſt agreeable to the intention of the ſtatute to bail them. 2 *Haw.* 101.

For a juſtice of the peace before whom an offender ſhall be brought for petit larceny out of ſeſſions, may not puniſh the ſaid offender by his diſcretion, and ſo let him go; but muſt have him committed or bailed, to the intent he may come to his trial, as in caſes of other felonies: And if upon his trial, the jury ſhall find the goods ſtolen to exceed 12 *d.* in value, the offender ſhall have judgment to die for the fault. *Dalt. c.* 154.

It ſeemeth that all petit larceny is felony, and conſequently requires the word *feloniouſly* in an indictment for it; yet it is certain, that it is not puniſhable with the loſs of life, or lands, but only with the forfeiture of goods and chattels, and whipping, tranſportation, or other corporal puniſhment. 1 *Haw.* 95.

If a man appear to be obſtinately mute, on an arraignment of petit larceny, he ſhall not have judgment of *pain fort & dure*, as in caſes of grand larceny; but he ſhall have the like judgment as if he had confeſſed the indictment. 2 *Haw.* 329.

III. Larceny from the perſon.

If the goods are taken from a man's perſon, the offence receives a farther degree of guilt; and if it is attended with putting him in fear, it is called *robbery:* for which ſee that title.

If it is without putting him in fear, then it is called barely *larceny from the perſon.* 1 Haw. 95.

If it is done privily without his knowledge, by picking of pockets, or otherwiſe, it is excluded from the benefit of clergy by the 8 *El. c.* 4. (That is, if the thing ſtolen be above the value of 12 *d.* 2 *H. H.* 366.) But this ſtatute extendeth not to acceſſaries, either before or after. 2 *Haw.* 350.

If it is done openly and avowedly before his face, it is within the benefit of clergy, (1 *Haw.* 97.) except where it is committed in a dwelling houſe, or outhouſe thereunto belonging, to the value of 40 *s.* from which the benefit of clergy is taken away by the 12 *An. ſt.* 1. *c.* 7. hereafter following.

IV. Larceny from the houſe.

This muſt be underſtood where the offence falls ſhort of *burglary.*

1. By the 3 *W. c.* 9. Every perſon that ſhall felonioufly take away any goods, being in any dwelling houſe, any perſon being therein, and put in fear; or ſhall rob any dwelling houſe in the day time, any perſon being therein; he, his comforters and abettors, ſhall be guilty of felony without benefit of clergy. Robbing a dwelling houſe, ſome perſon being therein.

2. And by the 39 *El. c.* 15. Every perſon who ſhall be convicted of the felonioufly taking away in the day time any money Robbing an houſe to the value of 5 *s.* no perſon being therein,

or goods of the value of 5 *s.* in any dwelling houſe, or outhouſe thereunto belonging, and uſed to and with the ſame, altho' no perſon be therein, ſhall be guilty of felony without benefit of clergy.

This requires an actual breaking, and not entring by the doors being open. 1 *H. H.* 548.

Stealing out of an houſe to the value of 40 *s.* no perſon being therein, and the ſame not broken open.

3. And by the 12 *An. ſt.* 1. *c.* 7. Every perſon that ſhall feloniouſly ſteal any money, goods, or merchandizes, to the value of 40 *s.* being in any dwelling houſe, or outhouſe thereunto belonging, altho' it be not broken open, nor any perſon be therein, ſhall be guilty of felony without benefit of clergy.

Breaking a houſe in the day time, any perſon being therein, and put in fear.

4. And by the 1 *Ed.* 6. *c.* 12. *ſ.* 10. Every perſon who ſhall be convicted of breaking any houſe in the day time, any perſon being therein, and put in fear, ſhall be guilty of felony without benefit of clergy.

And this altho' nothing be actually taken: But it requires not only an actual breaking, and putting in fear, but alſo an entry *with intent to commit* felony, and ſo to be laid in the indictment. 1 *H. H.* 548.

Shoplifting, to the value of 5 *s.*

5. By the 10 & 11 *W. c.* 23. Every perſon that ſhall, by night or by day, in any ſhop, warehouſe, coach-houſe or ſtable, privately and feloniouſly ſteal any goods, wares, or merchandizes, to the value of 5 *s.* altho' it be not broken open, nor any perſon be therein, ſhall be guilty of felony without benefit of clergy.

Reward for convicting an offender: Exemption from pariſh offices.

6. Every perſon who ſhall apprehend any one guilty of breaking open houſes in a felonious manner; or of privately and feloniouſly ſtealing goods, wares, or merchandizes, of the value of 5 *s.* in any ſhop, warehouſe, coach-houſe, or ſtable, tho' they be not broken open, and altho' no perſon be therein to be put in fear, and ſhall proſecute him to conviction, ſhall have a certificate without fee, under the hand of the judge, certifying ſuch conviction, and within what pariſh or place the felony was committed, and alſo that ſuch felon was diſcovered and taken, or diſcovered or taken, by the perſon ſo diſcovering or apprehending; and if any diſpute ariſe between ſeveral perſons ſo diſcovering or apprehending, the judge ſhall appoint the certificate into ſo many ſhares to be divided among the perſons concerned as to him ſhall ſeem juſt and reaſonable:

And if any perſon ſhall happen to be ſlain by any ſuch houſe-breaker, or other felon as aforeſaid, in endeavouring to apprehend him, the executors or adminiſtrators of ſuch perſon ſlain, ſhall have the like certificate:

Which certificate ſhall be inrolled by the clerk of the peace of the county in which it ſhall be granted, for which he ſhall have 1 *s.*

And the ſaid certificate may be once aſſigned over, and no more:

And the original proprietor, or the aſſignee of the ſame, ſhall by virtue thereof be diſcharged from all manner of pariſh and ward offices, within the pariſh or ward where the felony was committed.

But the certificate ſhall not be aſſignable, after it has been once made uſe of to exempt any perſon from ſuch office. 10 & 11 *W. c.* 23.

7. And

7. And moreover, as a further reward, every perſon who ſhall apprehend any perſon guilty of the felonious breaking and entering of any houſe in the day time, and proſecute him to conviction, ſhall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the aſſizes, certifying the conviction, and in what pariſh the ſaid felony was committed, and alſo that ſuch felon was taken by the perſon claiming the reward; and if any diſpute ſhall happen to ariſe between the perſons claiming, the judge ſhall by the ſaid certificate appoint the ſame to be paid amongſt the parties claiming the ſame, in ſuch ſhare and proportions as to him ſhall ſeem juſt and reaſonable:

40 l. reward for convicting.

And on tender of ſuch certificate to the ſheriff, and demand made, he ſhall pay to the perſon ſo intitled the ſum of 40 *l.* without fee, within one month after ſuch tender and demand; on pain of forfeiting double, with treble coſts. 5 *An. c.* 31.

8. And if any watchman, or any other perſon, be killed in endeavouring to apprehend any ſuch houſebreaker, his executors or adminiſtrators ſhall have a certificate delivered under the hand and ſeal of the judge, or of the two next juſtices, of ſuch perſon being ſo killed; which certificate they ſhall, upon ſufficient proof before them made, give without fee: Whereupon ſuch executor or adminiſtrator ſhall be intitled to receive the like ſum of 40 *l.* in like manner. 5 *An. c.* 31. *ſ.* 2.

40 l. to the executors of a perſon killed.

9. And moreover, If any perſon being out of priſon, ſhall commit any ſuch houſebreaking in the day time as aforeſaid, and afterwards diſcover two or more the like offenders, ſo as two or more he convicted, he ſhall have the like reward and allowance of 40 *l.* and alſo all other advantages which are given to perſons who ſhall apprehend and convict any the like offenders; and ſhall alſo have the king's pardon for all burglaries, robberies, and felonies (except murder and treaſon) by him committed before ſuch diſcovery made; which pardon ſhall be likewiſe a good bar to an appeal. 5 *An. c.* 31. *ſ.* 4.

40 l. and a pardon for convicting accomplices.

10. And the ſheriff, on producing the certificates, and receipts for the ſaid rewards, may deduct the ſame on his accounts; and if he have not money in his hands, he ſhall be repaid out of the treaſury, on certificate from the clerk of the pipe. 5 *An. c.* 31. *ſ.* 3.

Sheriff to be repaid out of the treaſury.

Or inſtead of charging the ſame in his accounts, he may immediately apply to the commiſſioners of the treaſury, who ſhall forthwith repay the ſame without fee. 3 *G. c.* 15. *ſ.* 4.

V. Larceny in a booth or tent.

Perſons found guilty of robbing any perſon in any booth or tent, in any fair or market, the owner, his wife, children, or ſervants being within, whether they be ſleeping or waking, ſhall ſuffer as felons without benefit of clergy. 5 & 6 *Ed.* 6. *c.* 9. *ſ.* 5.

VI. Larceny on a navigable river.

All perſons who ſhall feloniouſly ſteal any goods or merchandize of the value of 40*s.* in any ſhip, barge, lighter, boat or other veſſel or craft, upon any navigable river or in any port of entry or diſcharge, or in any creek belonging thereto, or from off any wharf or key adjacent to any navigable river, port of entry or diſcharge, or ſhall be preſent and aſſiſting therein, ſhall be guilty of felony without benefit of clergy. 24 *G.* 2. *c.* 45.

VII. Other larcenies.

There are moreover divers other larcenies, which are not here ſpecified, the ſame being inſerted under the ſeveral titles in this book, to which they do more properly belong, That is to ſay,

Larceny in ſtealing woollen cloth off the tenters in the night time, is inſerted under the title **Woollen manufacture.**

Larceny in ſtealing linen, fuſtain, callico, or cotton cloth, yarn, or goods laid to be printed, bleached, or dried, to the value of 10*s.* under title **Linen cloth.**

Larceny in ſtealing cattle or ſheep (with a reward of 10*l.* for convicting an offender) under the titles **Cattle** and **Sheep.**

Larceny in ſtealing deer in parks, conies or hares in warrens, or fiſh in ponds, under title **Game.**

Larceny in ſtealing hawks or ſwans, alſo under title **Game.**

VIII. Receiving ſtolen goods.

By the 3 *W.* *c.* 9. If any perſon ſhall buy or receive any ſtolen goods, knowing the ſame to be ſtolen; he ſhall be deemed an acceſſary after the fact, and ſuffer accordingly. *ſ.* 4.

And by the 5 *An.* *c.* 31. If any perſon ſhall buy or receive any ſtolen goods, knowing them to be ſtolen, or ſhall receive, harbour, or conceal any felons or thieves, knowing them to be ſo; he ſhall be deemed acceſſary to the felony, and, being convicted on the teſtimony of one witneſs, ſhall ſuffer death as a felon convict. *ſ.* 5.

And by the 4 *G.* *c.* 11. Perſons convicted of receiving or buying ſtolen goods, knowing them to be ſtolen, may be tranſported for 14 years. *ſ.* 1.

And notwithſtanding that regularly the acceſſary cannot be tried, till the principal be convicted, yet by the 5 *An.* *c.* 31. it is enacted, that if the principal felon cannot be taken, ſo as to be proſecuted and convicted, yet nevertheleſs the buyer and receiver of ſtolen goods may be proſecuted as for a miſdemeanor, and puniſhed by fine and impriſonment, or other ſuch corporal puniſhment as the court ſhall think fit; which ſhall exempt him from being puniſhed as acceſſary, if the principal ſhall be afterwards taken and convicted. *ſ.* 6.

IX. Advertiſing

IX. Advertiſing or receiving a reward for helping to ſtolen goods.

By the 25 *G.* 2. *c.* 36. which hath continuance for 3 years, *&c.* If any perſon ſhall publickly advertiſe a reward, with no queſtions aſked, for the return of things ſtolen or loſt, or ſhall make uſe of words therein purporting that ſuch reward ſhall be given, without ſeizing or making inquiry after the perſon producing ſuch thing; or ſhall offer to return to any pawnbroker, or other, the money lent thereon, or other reward for the return thereof, he and alſo the printer and publiſher of ſuch advertiſement, ſhall reſpectively forfeit 50 *l.* with coſts, to him who ſhall ſue in 6 months.

And by the 4 *G.* *c.* 11. Wherever any perſon taketh money or other reward, directly or indirectly, under pretence, or upon account of helping any perſon to any ſtolen goods; he ſhall (unleſs he apprehend the felon, or cauſe him to be apprehended, and cauſe him to be brought to his trial, and give evidence againſt him) be guilty of felony in the ſame manner as if he had ſtolen the ſame. *ſ.* 4.

X. Charges of proſecution and conviction how to be paid.

By the ſtatutes of the 1 *J.* *c.* 10. and the 27 *G.* 2. *c.* 3. The offender, if able, ſhall pay his own charges for carrying to gaol, and of thoſe who guard him thither; and if he is not able, then the treaſurer ſhall pay the ſame out of the county rates: as is ſhewn more at large in title **Commitment.**

And by the 25 *G.* 2. *c.* 36. The court before whom any perſon hath been convicted of any grand or petit larceny, may at the prayer of the proſecutor, and on conſideration of his circumſtances, order the county treaſurer to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble: and the clerk of aſſize, or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on payment of 1 *s.* and the treaſurer ſhall pay the ſame on ſight, which ſhall be allowed in his accounts. *ſ.* 11.

And by the aforeſaid act of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on his recognizance, in ſuch caſe, to give evidence, the court may allow him his reaſonable charges, to be paid in like manner by the treaſurer; the proper officer to have 6 *d.* for making out the order. Except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

Leather.

Concerning the duties on leather, ſee title Exciſe.

THERE are ſeveral ſtatutes unrepealed, which were made before the firſt year of the reign of K. *James* the Firſt, concerning leather; but the act made in that year renders them all uſeleſs, the ſame being intended to reduce all the acts into one relating to that commodity; which ſame thing was attempted in that king's reign, with ſucceſs, in divers other articles.

Therefore in this title I ſhall go no farther back than the ſtatute of the 1 *J. c.* 22. And to avoid abundance of repetitions, I will firſt inſert the methods of recovering the ſeveral penalties, and will then proceed with this article in its ſeveral progreſſes, in the order of time, from the firſt flaying off the hide, to its being at laſt ſold and manufactured in leather, or exported.

I. Of the penalties under this title.
II. Of hides before they come to the tanner.
III. Of the tanning of hides.
IV. Of the currying of hides.
V. Of the ſearching and ſealing of leather.
VI. Of the triers of leather.
VII. Of the ſelling and regiſtring of leather.
VIII. Of the manufacturing of leather, or exporting it.

I. Of the penalties under this title.

Money and goods forfeited by the 1 J. how to be diſtributed.

1. All *forfeitures* by the act of the 1 *J. c.* 22. not hereafter otherwiſe ſpecially directed, ſhall be divided one third to the king, one third to him that ſhall ſue, and one third to the city, town, or lord of the liberty. 1 *J. c.* 22. *f.* 46.

And all *leather, ſhoes, or other things* made of tanned or curried leather, ſeized and condemned by the triers hereafter mentioned, by the ſaid ſtatute of the 1 *J. c.* 22. if in *London*, ſhall be brought to *Guild-hall*, and prized by indifferent perſons, and the value thereof divided, one third to the ſeizor, one third to the chamber of *London*, and one third to ſuch poor as the mayor and four aldermen ſhall appoint: If in any other city, town, or place, they ſhall be brought to the common hall of ſuch town, or to ſome convenient and open place to be appointed by the lord of the liberty where no common hall is, there to be prized as aforeſaid,

aforesaid, and the value divided, one third to the poor and in other deeds of charity after the discretion of the mayor or lord of the liberty, one third to the mayor for the use of the commonalty, or to the lord of the liberty where there is no mayor or other such like officer, and one third to the seizor. 1 *J.* *c.* 22. *f.* 46.

2. And the abovesaid forfeitures on the 1 *J.* may be sued for in any court of record, by action of debt, bill, plaint, or information, or otherwise. 1 *J.* *c.* 22. *f.* 46. Forfeitures on the 1 J. and on the 9 An. how to be recovered.

And likewise all justices of assize, justices of the peace, mayors, and stewards of leets, may inquire thereof in their sessions, leet, or law day, and hear and determine the same. 1 *J.* *c.* 22. *f.* 50.

And moreover by the 9 *An.* *c.* 11. Any two justices near where the forfeitures on the said act of the 9 *An.* shall be incurred, or offence committed, or where any offence shall be committed against the aforesaid act of 1 *J.* *c.* 22. may hear and determine the same; who shall on information or complaint, in 3 months after any seizure made, or offence committed, summon the party accused, and the witnesses; and on appearance, or contempt in not appearing (on proof of notice given) shall proceed to examine witnesses on oath, and give judgment, and issue warrants for levying the penalties, and cause the distress to be sold, if not redeemed in six days. And if either party is not satisfied with the judgment, he may appeal to the next sessions, who shall determine the same, and in case of conviction issue warrants for levying the penalties. *f.* 36.

3. All forfeitures and sums by the act of the 13 & 14 *C.* 2. *c.* 7. shall be recovered in any court at *Westminster*, or in any court of record in the city, town, county, or place where the offence shall be committed; to be distributed half to the king, and half to the informer. *f.* 10. Forfeitures on the 13 & 14 C. 2. c. 7.

II. Of hides before they come to the tanner.

1. If any raw hide or calf skin shall wilfully or negligently be gashed or cut in flaying, or being gashed or cut shall be offered to sale; the butcher or other person who impaired the same, or the person offering the same to sale, shall forfeit 2 *s.* 6 *d.* for every hide, and 1 *s.* for every calf skin, half to the poor of the parish where it is found or offered to sale, and half to him that shall sue. 9 *An.* *c.* 11. *f.* 11. Gashing hides.

2. No butcher shall water any hide, except in *June*, *July*, and *August*; on pain of 3 *s.* 4 *d.* 1 *J.* *c.* 22. *f.* 2. Watering hides.

3. No butcher shall offer any hide to sale, being putrefied; on pain of 3 *s.* 4 *d.* 1 *J.* *c.* 22. *f.* 2. Rotten hides.

4. None but tanners shall buy any rough hide or skin (except salt hides for the use of ships); on pain of forfeiting the same, or the value thereof. 1 *J.* *c.* 22. *f.* 7. Who may buy hides.

5 No person shall forestall any hides, nor buy any but in open fair or market, unless of persons killing the beast for their own household, on pain of 6 *s.* 8 *d.* 1 *J.* *c.* 22. *f.* 7. Forestalling hides.

III. Of

III. Of the tanning of hides.

Who may be a tanner.

1. No perſon ſhall be a tanner, but who hath ſerved 7 years, except the wife or ſuch ſon of a tanner as hath uſed the trade four years, or the ſon or daughter of a tanner, or ſuch perſon who ſhall marry ſuch wife or daughter to whom he ſhall leave a tan houſe and fats; on pain of forfeiting all ſuch leather by him tanned, or of which he ſhall receive any profit, or the value thereof. 1 *J. c.* 22. *ſ.* 5.

No tanner ſhall be a butcher, on pain of 6 *s.* 8 *d.* a day. 1 *J. c.* 22. *ſ.* 4.

No tanner ſhall be of any craft exerciſed in the cutting or working of leather: on pain of forfeiting the ſame, or the value thereof. 1 *J. c.* 22. *ſ.* 6.

Oak bark.

2. No perſon ſhall regrate or ingroſs any oaken bark; on pain of forfeiting the ſame, or the value thereof. 1 *J. c.* 22. *ſ.* 19.

No perſon ſhall fell any oak trees meet to be barked, where bark is worth 2 *s.* a cart load, over and above the charges of barking and pilling (except timber for houſes, ſhips, or mills) but between *April* 1. and *June* 30. on pain of forfeiting the ſame, or double value thereof. 1 *J. c.* 22. *ſ.* 20.

No purveyor of timber ſhall fell for the king's uſe, any oak timber tree meet to be barked, but in barking time (except for the king's houſes or ſhips); or ſhall receive any profit by any lops, tops, or bark of trees to be taken by them; or ſhall take or diſpoſe from the owner, any more of any tree ſo to be taken, than only the timber thereof to be uſed only about the king's buildings or ſhips: on pain of forfeiting to the party grieved, for every tree, and for the lops, tops, and bark of every tree 40 *s.* And the owner may withhold any bark, lop, or top, any commiſſion or other matter notwithſtanding. 1 *J. c.* 22. *ſ.* 21.

Manner of tanning.

3. No tanner ſhall ſuffer any hide or ſkin to lie in the limes till they be overlimed; nor ſhall put them into any tan fats, before the lime be perfectly ſokened and wrought out of them; nor ſhall uſe in the tanning thereof any thing but aſh bark, oak bark, tap wort, malt, meal, lime, culver dung, or hen dung; nor ſhall ſuffer it to lie wet till it be frozen; nor ſhall dry it by the fire, or ſummer ſun; nor ſhall tan any hide or ſkin putrefied or rotten; nor ſhall ſuffer the hides for utter ſole leather to lie in the woozes leſs than 12 months, nor the hides for upper leathers leſs than nine months; nor ſhall negligently work the hides in the woozes, but ſhall renew and make ſtrong their woozes, as often as ſhall be requiſite; nor ſhall put to ſale any leather tanned in any other ſort than by this ſtatute is limited: on pain of forfeiting every hide or ſkin tanned and offered to ſale contrary to this act, or the value thereof. 1 *J. c.* 22. *ſ.* 11.

No tanner ſhall raiſe with any mixtures any hide to be converted to backs, bend leather, clouting leather, or any other ſole leather, except they be for largeneſs, ſtate, and growth fit for that purpoſe,

poſe, to be tried by the triers hereafter mentioned; on pain of forfeiting the ſame. 1 *J.* *c.* 22. *ſ.* 12, 13.

No perſon ſhall ſet the fats in tan hills, or other places, where the woozes or leather may take any unkind heats; or ſhall put any leather into any hot or warm woozes; or ſhall tan any hide or ſkin with any hot or warm woozes; on pain of 10 *l.* and the pillory on three market days in the next market town. 1 *J.* *c.* 22. *ſ.* 16, 17.

If any tanner or other perſon ſhall ſhave or cauſe to be ſhaved any hide or calf ſkin, before it be thoroughly tanned, whereby it ſhall be impaired; he ſhall forfeit the ſame or the value, half to the king, and half to him that ſhall ſue. 9 *An.* *c.* 11. *ſ.* 12.

Every tanner, who ſhall ſhave, cut, and rake the upper leather hides all over, or the necks of their backs and butts; ſhall forfeit the ſame, or the value thereof, and the ſearchers and ſealers hereafter mentioned may ſeize them. 13 & 14 *C.* 2. *c.* 7. *ſ.* 8.

If any tanner ſhall offer to ſale any leather not thoroughly tanned or dried, to the ſatisfaction of the triers; he ſhall forfeit ſo much as ſhall be ſo deficient, whether whole hides or part thereof. 1 *J.* *c.* 22. *ſ.* 15.

IV. Of the currying of hides.

Who may be a currier.

1. No currier ſhall be a tanner, ſhoemaker, butcher, or other artificer uſing cutting of leather; on pain of forfeiting 6*s.* 8*d.* for every hide he ſhall curry during the time that he ſhall occupy any of the ſaid miſteries. 1 *J.* *c.* 22. *ſ.* 25.

Leather delivered to the currier.

2. Every artificer dealing in cutting of leather, or other perſon, who ſhall buy any red tanned leather, within *London* or 3 miles thereof, ſhall before the next market day for ſale of leather, give notice thereof to one of the curriers company, and in three weeks after ſhall deliver the leather ſo bought (except what ſhall be uſed for ſoles without being curried, tallowed, or dreſſed) to the ſaid currier, to be curried, tallowed, or dreſſed; on pain of 6*s.* 8*d.* for every back, butt, hide, or calf ſkin. 13 & 14 *C.* 2. *c.* 7. *ſ.* 13.

In what time he ſhall curry it.

3. No currier ſhall refuſe to curry any leather to him brought by any artificer being a cutter of leather, and bringing with him ſufficient ſtuff for the perfect liquoring the ſame, with as convenient ſpeed as may be, not exceeding 8 days in ſummer, and 16 in winter, in the preſence of the ſaid artificer, if he will be preſent, otherwiſe in his abſence; on pain of forfeiting to the party grieved for every hide or piece of leather not in this manner curried, and well and ſpeedily dreſſed, 10*s.* 1 *J.* *c.* 22. *ſ.* 26.

And by the 12 *G.* 2. *c.* 25. If any currier ſhall refuſe to curry any leather brought or ſent to him by any perſon dealing or working in leather, or ſhall neglect to curry the ſame in 16 days between *Sep.* 28. and *March* 25. and in 8 days in the remaining part of the year; he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit any ſum not exceeding 5 *l.* by diſtreſs;

half

half to the informer, and half to the poor. Perſons aggrieved may appeal to the next ſeſſions. *ſ.* 4, 5, 6.

Manner of currying.

4. No perſon ſhall curry any leather in the houſe of any ſhoemaker or other perſon, but only in his own houſe ſituate in a corporate or market town; nor ſhall curry any leather except it be perfectly tanned; nor ſhall curry any hide or ſkin being not thoroughly dry after his wet ſeaſon; in which wet ſeaſon, he ſhall not uſe any ſtale urine, or any other deceitful or ſubtle mixture or means to hurt the ſame; nor ſhall curry any leather meet for utter ſole leather, with any other ſtuff than with hard tallow, nor with any leſs of that than the leather will receive; nor ſhall curry any leather meet for overleather, and inner ſoles, but with ſufficient ſtuff, being freſh and not ſalt, and thoroughly liquored till it can receive no more; nor ſhall burn or ſcald any hide or leather in the currying; nor ſhall ſhave any leather too thin, nor ſhall gaſh ar hurt any leather in the ſhaving, or by any other means; but ſhall work the ſame ſufficiently in all points: on pain of forfeiting for every ſuch offence (other than in gaſhing or hurting in ſhaving) 6*s.* 8*d.* and the value of ſuch ſkin or hide marred by his evil workmanſhip; and for every offence in gaſhing or hurting by ſhaving, double ſo much to the party grieved as the leather ſhall be impaired thereby, by the judgment of the wardens of the curriers, and of the warden of the company whereof the party grieved ſhall be. 1 *J. c.* 22. *ſ.* 22.

V. Of the ſearching and ſealing of leather.

Searchers and ſealers in London.

1. The mayor and aldermen of *London* (on pain of 40 *l.* for every year they make default, half to the king, and half to him that ſhall ſue) ſhall yearly appoint 8 freemen of ſome of the companies of cordwainers, curriers, ſadlers, or girdlers (whereof one ſhall be a ſealer, and keep a ſeal for the ſealing of leather); who ſhall be ſworn before them to do their office truly: And they ſhall ſearch and view all tanned leather brought to market, whether it is thoroughly tanned and dried; and if it is, ſhall ſeal the ſame. 1 *J. c.* 22. *ſ.* 31.

And four of the ſaid ſearchers ſhall be removed at the end of the year, and four new ones choſen; and no one ſhall continue in the office above two years together, nor ſhall be employed again till after the end of 3 years; on pain of 10 *l.* a month. 1 *J. c.* 22. *ſ.* 36.

In other places.

2. And all mayors, and lords of liberties, fairs, and markets, out of the compaſs of 3 miles from *London*, ſhall (on like pain of 40 *l.*) appoint and ſwear yearly two, three, or more honeſt and ſkilful men, to be ſearchers within their precincts; who ſhall ſearch as often as they ſhall think good, or need ſhall be, and ſhall ſeal what they find ſufficient: And if they find any leather offered to be ſold, or brought to be ſealed, which ſhall be inſufficiently tanned or curried, or any boots, ſhoes, bridles, or other thing made of tanned or curried leather, inſufficiently tanned, curried, or wrought, they may ſeize and keep the ſame, till they be tried by the triers. 1 *J. c.* 22. *ſ.* 32.

3. The

3. The wardens of the curriers shall search and try all such curried leather as shall be brought to any of their company to be curried, and shall with a seal therefore to be prepared, with convenient speed, not exceeding one day after the currying and request made, seal such leather as they shall find sufficiently curried; taking for every hide so sealed after the rate of one penny for the dicker, and for every six dozen of calves skins one penny, to be paid by the currier: on pain of forfeiture for every hide not searched and sealed 6*s.* 8*d.* 1 *J.* *c.* 22. *f.* 27. Fee for sealing.

But they shall not visit, search, or seize any leather, hide, or skin, but such as shall be curried or dressed within *London* or three miles thereof, by some members of their own company, nor in any other place but in the open market, or in the shops, houses, or warehouses of such curriers. 1 *W.* *Sess.* 1. *c.* 33. *f.* 4.

4. If any searcher or sealer shall refuse with convenient speed to seal any leather which is sufficient, or do allow that which is insufficient; he shall forfeit 40*s.* If he shall receive any bribe, or exact any other fee than by this act is appointed, he shall forfeit 20*l.* And if he shall refuse to execute his office, he shall forfeit 10*l.* 1 *J.* *c.* 22. *f.* 37. Penalty on the searcher or sealer misbehaving.

5. If any person shall deny, or withstand, or not suffer the searching or seizing of insufficient wares, he shall forfeit 5*l.* 1 *J.* *c.* 22. *f.* 40. Penalty on hindring the searcher.

VI. Of the triers of leather.

1. The mayor of *London* (on pain of 5*l.* half to the king, and half to him that shall sue) shall within 6 days after notice given to him of any seizure of any leather, red and unwrought, appoint 6 triers, two of the cordwainers company, two of the curriers, and two of the tanners using *Leadenhall* market; who upon their oaths to be taken before him, shall on the second or third market day for leather (to be holden on *Tuesday*, 13 & 14 *C.* 2. *c.* 7. *f.* 9.) in the afternoon, try whether the same be sufficient or not. 1 *J.* *c.* 22. *f.* 33, 35. Triers in London.

2. Every other mayor, or lord of liberty, out of the compass of 3 miles from *London*, within whose precincts any seizure of any tanned leather, red or curried, or of any shoes, boots, or other wares made of tanned leather, shall be, shall (on like pain) with all convenient speed after notice given to him of such seizure, appoint six honest and expert men, to try whether the same be sufficient or not; the same trial to be openly on some market day, and within 15 at the furthest from the time of the seizure, upon the oaths of the said triers. 1 *J.* *c.* 22. *f.* 34. In other places.

3. Triers not doing their duty, shall forfeit 5*l.* 1 *J.* *c.* 22. *f.* 35. Triers misbehaving.

VII. Of the selling and registring of leather.

1. No person shall put to sale any tanned leather red and unwrought, but in open fair or market, unless the same hath been first searched and sealed; nor shall offer to sale any tanned leather Selling unsealed.

red

red and unwrought before it be ſearched and ſealed; on pain of forfeiting the ſame, or the value thereof, and alſo for every hide or piece 6*s.* 8*d.* and for every dozen of calves ſkins 3*s.* 4*d.* 1 *J.* *c.* 22. *f.* 14.

But no perſon ſhall incur any penalty for ſelling or buying any ſheep ſkins unſearched or unſealed. 4 *J.* *c.* 6. *f.* 2.

Where to be ſold and regiſtred.

2. All red tanned leather ſhall be bought only in the open fair or market, and not in any houſe, yard, ſhop, or other place; on pain of forfeiting the ſame, or the value thereof, and the contract to be void. And all ſuch leather ſhall be ſearched and ſealed before ſale, and on ſale ſhall be regiſtred, and an entry made both by the buyer and ſeller, both being preſent, and their names and dwellings entred into the book of the regiſter; on pain that every ſuch buyer or ſeller who ſhall make default, ſhall forfeit the ſame or the value thereof. 13 & 14 *C.* 2. *c.* 7. *f.* 4.

Fee for regiſtring.

3. Searchers and ſealers ſhall keep a regiſter, wherein they ſhall enter all bargains made for leather, hides, or ſkins, during the fair or market, being thereunto required by the buyer or ſeller, with the prices; taking for ſearching, ſealing, and regiſtring of every ten hides, backs, or butts, of the ſeller, 2*d.* and ſo after the rate; and for every ſix dozen of calves ſkins or ſheep ſkins 2*d.* and of the buyer after the ſame rate. 1 *J.* *c.* 22. *f.* 41.

Regiſtring in London.

4. All red tanned leather which ſhall be brought into *London*, or within 3 miles thereof, ſhall be brought to *Leadenhall* before it be houſed, and there viewed whether it hath been ſearched or ſealed, and ſhall be regiſtred by the ſearchers, with half ſuch fees to be paid for ſuch of the ſaid tanned leather as ſhall be bought out of *London*, or 3 miles compaſs from the ſame, and ſearched and ſealed before it be brought within the city; on pain that every perſon houſing or not bringing his leather to *Leadenhall* as aforeſaid, ſhall forfeit for every hide or ſkin 6*s.* 8*d.* 1 *J.* *c.* 22. *f.* 38.

Buyer of leather ſelling it again unwrought.

5. By the 1 *J.* *c.* 22. No perſon ſhall buy any tanned leather unwrought, but who ſhall work the ſame into wares; on pain of forfeiting the ſame, or the value thereof. *f.* 8.

But by the 12 *G.* 2. *c.* 25. All perſons who deal or work in leather, may buy all ſorts of tanned leather in open fair or market, whether curried or uncurried, being firſt ſearched and ſealed; and may cut and ſell the ſame in any ſmall pieces in their open ſhops. *f.* 1.

And by the 1 *W.* *Seſſ.* 1. *c.* 33. All dealers or workers in leather may buy all ſorts of red tanned leather in open fair or market, whether curried or uncurried, being firſt ſearched and ſealed, and may ſell it again in their open ſhops, or cut and convert it into other made ware. *f.* 5.

Where it may be ſold in London.

6. Within *London* or 3 miles thereof, no perſon ſhall ſell any wares appertaining to the miſtery of any artificer cutting leather, but only in open ſhop, common fair or market, whereby the wardens may have ſearch thereof; on pain of forfeiting the ſame, and alſo 10*s.* 1 *J.* *c.* 22. *f.* 45.

VIII. Of the manufacturing of leather, or exporting it.

Shoemaker's duty.

1. No ſhoemaker ſhall make any boots or ſhoes, or any part of them, of *Engliſh* leather wet curried (other than deer ſkins, calves ſkins, or goats ſkins made and dreſſed like *Spaniſh* leather), but of leather well and truly tanned and curried in manner aforeſaid, or of leather well and truly tanned only, and well ſewed, without mixing overleathers, that is to ſay, part being neat's leather, and part calves leather; nor ſhall put into any part of any ſhoes or boots, any leather made of a ſheep ſkin, bull hide, or horſe hide; nor in the upper leather of any ſhoes, or into the nether part of any boots (the inner part of the ſhoe only excepted) any part of any hide from which the ſole leather is cut, called the wombs, necks, ſhank, flank, powle or cheek; nor ſhall put into the utter ſole any other leather, than the beſt of the ox or ſteer hide; nor into the inner ſole, any other leather than the wombs, neck, powle, or cheek; nor into the treſwels of the double ſoled ſhoes, other than the flanks of any the hides aforeſaid; nor ſhall make or put to ſale between *Sep.* 30. and *April* 20. any ſhoes or boots meet for any perſon above 4 years old, wherein ſhall be any dry *Engliſh* leather, other than calves ſkins or goat ſkins made or dreſſed like *Spaniſh* leather; on pain of forfeiting for every pair of ſhoes or boots 3 *s.* 4 *d.* and the value thereof. 1 *J.* *c.* 22. *f.* 28.

Artificers working bad leather.

2. And if any ſhoemaker, ſadler, or other artificer uſing of leather, do make any wares of any tanned leather inſufficiently tanned, or of tanned and curried leather being not ſufficiently tanned and curried; he ſhall forfeit the ſame, and the value thereof. 1 *J.* *c.* 22. *f.* 44.

Shoemakers in London.

3. If any ſhoemaker or cobler within *London* or 3 miles thereof, ſhall put any tanned leather into any boots or ſhoes, or other things made of tanned leather, which ſhall not be well and perfectly tanned; or do put any curried leather into boots or ſhoes or other things made of leather, which ſhall not be ſufficiently tanned and curried, and alſo ſealed; he ſhall forfeit the ſame, and the value thereof. 1 *J.* *c.* 22. *f.* 44.

Search in London for inſufficient wares.

4. And the maſter and wardens of the miſteries of cordwainers, curriers, girdlers, and ſadlers of *London* (on pain of 40 *l.* for every year they make default, half to the king and half to him that ſhall ſue) ſhall once a quarter or oftner make ſearch and view of all boots and ſhoes, and other wares made of tanned leather, within three miles of *London*, and if they are not truly wrought, they may ſeize and carry the ſame to their ſeveral common halls. 1 *J.* *c.* 22. *f.* 29.

And by the 1 *W.* *Seſſ.* 1. *c.* 33. *f.* 3. Every hide, ſkin, or piece of tanned leather, ſhaved or liquored, of what colour ſoever, with any lawful liquor or dreſſing, and being well and truly curried, ſhall be deemed *ware* within the ſaid ſtatute of the 1 *J.* *c.* 22.

5. All

Exportation. 5. All sorts of leather and skins, tanned or dressed, may be exported. 20 *C.* 2. *c.* 5. 9 *An. c.* 6. *s.* 4.

Leet.

Meaning of the word. 1. LEET (*leth, læthe, lathe*) is of *Saxon* original, and seemeth to be no other than the court of the *lathe*; as the *county court* is the court of the county. For in ancient times the counties were subdivided into lathes, rapes, wapentakes, hundreds, and the like. And the sheriff twice a year performed his *tourn* or perambulation, for the execution of justice, throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain districts. And from hence, these courts, holden within particular parts of the county, have descended unto us without variation, under the name of the *leet, læth*, or *lathe* courts.

Lethe was otherwise called *Thrying*, and contained the third part of a province or shire. *Lamb. laws of K. Edw. num.* 34.

Leet, what. 2. The *court leet* is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's *torn* hath in the county. 2 *Haw.* 72.

Leet derived from the torn. 3. For the leet, or view of frankpledge, was by the king (for ease of the people) divided, and derived from the torn; who did grant to the lords to have the view of the tenants and resiants within their manors; so as the tenants and resiants should have the same justice that they had before in the torn, done unto them at their own doors, without any charge or loss of time. 2 *Inst.* 71.

Frankpledge. 4. The institution hereof for keeping of the king's peace, was, that every freeman at his age of 12 years (except peers, clergymen, and tenants in ancient demesne, 2 *Haw.* 57.) should in the leet, if he were in any leet, or in the torn if he were not in any leet, take the oath of allegiance to the king; and that pledges or sureties should be found for his truth to the king, and to all his people, or else to be kept in prison: This frankpledge consisted most commonly of ten households, which the *Saxons* called *theothung*, in the north parts they call them *tenmentale*, in other places of *England tithing*; whereof the masters of the nine families who were bound, were of the *Saxons* called *freoborgh*, which in some places is to this day called *freeborow*, that is, free surety, or frankpledge, and the master of the tenth household was called *theothungmon*, to this day in the west called *tithingman*, and *tithenheofod*, and *freoborher*, that is, *capitalis plegius*, chief pledge; and these ten masters of families, were bound one for another's family, that each man of their several families should stand to the law, or if he were not forthcoming, that they should answer for the injury or offence by him committed. And the precinct of this frankpledge was called *decenna*, because it consisted most commonly

of ten houſholds, and every man of thoſe ſeveral houſholds, for whom the pledge or ſurety was taken, were called *decennarii*; which names are continued as ſhadows of antiquity to this day. 2 *Inſt.* 73.

And by the due execution of this law, ſuch peace was univerſally holden within this realm, as no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed; ſo as a man with a white wand might ſafely have ridden before the conqueſt, with much money about him, without any weapon, throughout *England.* 2 *Inſt.* 73.

But no perſon is obliged to appear at any leet, within the precincts whereof he doth not reſide. 2 *Haw.* 57.

Leet when to be holden.

5. He that claims a leet by charter, muſt hold it on the days preſcribed by the charter; he that claims it by preſcription, may claim to hold it once or twice every year, at any ſuch days as ſhall upon reaſonable warning be appointed, if the uſage hath been ſo that it hath been kept at uncertain times; or elſe it ought to be kept at ſuch certain days and times, as by preſcription hath been certainly uſed. 2 *Inſt.* 72.

Offences within the leet, not inquirable in the torn.

6. If a nuſance done within the juriſdiction of the leet, be not preſented in the leet, the ſheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwiſe there might be a double charge; but in that caſe a writ may be directed to the ſheriff to inquire thereof. 4 *Inſt.* 261.

Steward may commit for an affray.

7. It ſeems that a court leet is ſo far intruſted with the keeping of the peace within its own precinct, that the ſteward of it may by recognizance bind any perſon to the peace, who ſhall make an affray in his preſence, ſitting the court, or may commit him to ward, either for want of ſureties, or by way of puniſhment, without demanding any ſureties of him, in which caſe he may afterwards impoſe a fine according to his diſcretion. 2 *Haw.* 4.

What felonies are cognizable in the leet.

8. The leet hath power to receive indictments of felonies at the common law, but not of felonies by act of parliament, unleſs ſpecially limited thereto. 2 *H. H.* 71.

Other publick offences.

9. Furthermore, this court hath cognizance of a great number of offences, both by the common law, and by ſtatute; as for inſtance, tipling in alehouſes; aſſaults whereby bloodſhed enſueth; common barators; bawdy houſes; defects in bridges and highways; deſtroyers of ancient boundaries; bakers; brewers; butchers; curriers; cottages and inmates; deciners or ſuitors not appearing in the leet; eſtrays, waifs, and treaſure trove; eaves droppers; foreſtallers, regrators, ingroſſers; deſtroyers of game; gameſters; hedge breakers; neglecters of hue and cry; higlers; innholders; millers; night walkers; common nuſances; want of pillory, and ſtocks, and common pounds; reſcous; ſcolds; ſhoemakers; ſearchers of leather; ſtoned horſes of two years old put on the common; victuallers; conſtables neglecting watch and ward; weights and meaſures; and many others by particular ſtatutes. *Wood* 836.

Private offences.

10. But a man cannot be preſented in the leet for ſurcharging the common, or for digging in the common; becauſe this con-

cerns the private, not the publick intereſt, and belongs rather to the court baron to inquire of it. *Wood* 833.

Within what time offences are cognizable.

11. Alſo no offence is cognizable in the leet, unleſs it aroſe ſince the holding of the laſt court. 2 *Haw.* 66.

Conſtables choſen in the leet.

12. The conſtables of common right are to be choſen and ſworn in the leet or torn. 2 *Haw.* 62.

Jurors.

13. The leet ſeems not to be within the equity of the ſtatute of 1 *R.* 3. which requires that the jurors in the torn ſhall have 20*s.* a year freehold, or 26*s.* 8*d.* copyhold or cuſtomary; for it is ſaid, that any perſon happening to be preſent at the leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the ſteward to be ſworn, whether he be reſident within the leet or not; by which it ſeems to be implied, that any perſon whatſoever is capable of being put upon the jury in a court leet. 2 *Haw.* 69.

Indictments to be indented.

14. Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the ſteward, to prevent embezilling. 2 *Haw.* 69.

Indictments of felonies, how to be certified.

15. Altho' the leet may receive indictments of felony, yet it cannot hear and determine them, but muſt ſend them to the gaol delivery, there to be heard and determined, if the offenders are in cuſtody; or remove them by *certiorari* into the king's bench, that proceſs may be made upon them to outlawry. 2 *H. H.* 71.

Traverſe.

16. It ſeems to be agreed, that a preſentment in the leet, of any offence within the juriſdiction of the court, being neither capital, nor concerning any freehold, ſubjects the party to a *fine* or *amerciament* without any farther proceeding, and admits of no traverſe to the truth of it: But if it touch the party's freehold, it may be removed into the king's bench, and there traverſed. 1 *Haw.* 217, 219. 2 *Haw.* 71.

Fine.

17. A *fine* is a pecuniary puniſhment, aſſeſſed by the ſteward, for an offence or contempt committed in court, or by publick officers out of court, in adminiſtration of their offices; a fine is always aſſeſſed by the ſteward, and is not to be affeered, tho' ſometimes it is called an amerciament; and the lord by a ſpecial warrant to the bailiff may diſtrain, or he may have an action of debt, for a fine impoſed, but he cannot impriſon; and this is the only court that can fine and not impriſon. *Wood* 837. 2 *Haw.* 61.

Amerciament.

18. An *amerciament* is a pecuniary puniſhment, aſſeſſed by the homage or jury, for offences committed out of court by private perſons, to be mitigated by affeerers (from *affeurer*, to tax), who are to affirm the reaſonableneſs thereof upon their oaths, where no expreſs penalty is inflicted by ſtatute; and for this alſo the lord may have an action of debt, or may diſtrain of common right, and impound the diſtreſs, or ſell it at his pleaſure, but cannot impriſon for it. *Wood* 838.

Amerciament how recovered.

19. And upon preſentment of a nuſance, the ſteward may either amerce the perſon, and order him alſo to remove it by ſuch a day, under pain of forfeiting a certain ſum; or he may order him to remove it, under ſuch a pain, without amercing him at all: and on preſentment at another court, that he hath not re-

moved such nusance (having had notice thereof) the pain may be recovered by distress or action of debt, without farther proceeding. 2 *Haw.* 61.

20. It seemeth that of common right any court leet, with the assent of the tenants, may make by-laws under certain penalties, in relation to matters properly within the cognizance of such court, as the reparation of the highways, and the like: And also a court baron by custom may make by-laws, for the well regulating of commons, and such like private matters. And therefore where a court leet and baron are holden together, as they usually are, it seems, that what is transacted therein, in relation to publick matters, shall be applied to the jurisdiction of the court leet, and what is done in relation to private matters, shall be intended to be done by the court baron. 2 *Haw.* 68. By-laws.

21. The lord of the leet ought to have a pillory and tumbrel; and for want thereof, he may be fined, or his liberty seized. *Cro. El.* 698. Pillory and stocks.

But the stocks are to be provided at the charge of the town; for originally they were not to punish, but to keep men in hold. *Wood* 838.

22. But the business of the leet hath declined for many years; and is devolved on the quarter sessions. Business devolved on the sessions.

Letter.

BY the 9 *G. c.* 22. which by the last continuance is of force until *Sep.* 1. 1757, *&c.* and by the 27 *G.* 2. *c.* 15. If any person shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, or other valuable thing, or threatning to kill or murder any of his majesty's subjects, or to burn their houses, outhouses, barns, stacks of corn or grain, hay or straw; or shall rescue any person in custody for such offence; he shall be guilty of felony without benefit of clergy.

Seditious or defamatory letters, belong to title **Libel.**

Lewdness.

1. IF any offend their brethren by adultery, whoredom, incest, or any other uncleanness, the churchwardens shall present them to the ordinary, and they shall not be admitted to the holy communion, till they be reformed. *Can.* 109.

2. But altho' lewdneſs be properly puniſhable by the eccleſiaſtical law, yet the offence of keeping a bawdy houſe cometh alſo under the cognizance of the law temporal, as a common nuſance, not only in reſpect of its endangering the publick peace, by drawing together diſſolute and debauched perſons, but alſo in reſpect of its apparent tendency to corrupt the manners of both ſexes. 3 *Inſt.* 205. 1 *Haw.* 196.

3. And in general, all open lewdneſs groſsly ſcandalous is puniſhable upon indictment at the common law. 1 *Haw.* 7.

4. And offenders of this kind are puniſhable not only with fine and impriſonment, but alſo with ſuch infamous puniſhment as to the court in diſcretion ſhall ſeem proper. 1 *Haw.* 196.

5. And upon information given to a conſtable, that a man and woman are in adultery or fornication together, or that a man and woman of evil report are gone to a ſuſpected houſe together in the night, the officer may take company with him, and if he find them ſo, he may carry them before a juſtice, to find ſureties of the good behaviour. *Dalt. c.* 124. 2 *Haw.* 61.

6. For it ſeems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy houſes with women of bad fame, as alſo for keeping bad women in his own houſe. 1 *Haw.* 132.

7. And a wife may be indicted together with her huſband, and condemned to the pillory with him, for keeping a bawdy houſe; for this is an offence as to the government of the houſe, in which the wife has a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex. 1 *Haw.* 2.

8. And if a wife go away, and remain with an adulterer, without being reconciled to her huſband, ſhe ſhall loſe her dower. 2 *Inſt.* 435.

9. But if a perſon is indicted for frequenting a bawdy houſe, it muſt appear that he knew it to be ſuch a houſe; and it muſt be expreſsly alledged that it is a bawdy houſe, and not that it is ſuſpected to be ſuch a houſe. *Wood* 686.

10. On an indictment for keeping a diſorderly houſe, a female witneſs ſwore, that ſhe was a ſailor's wife, and during her huſband's abſence out of the realm, ſhe had often proſtituted her ſelf there: Lord *Raymond* ſaid, it was an odious piece of evidence, and ought not to be heard. *Barl. Bawdy-h.*

11. But it is ſaid, a woman cannot be indicted for being a bawd generally, for that the bare ſolicitation of chaſtity is not indictable. 1 *Haw.* 196. 1 *Salk.* 382.

12. Adultery and fornication were anciently inquirable in the torn and leet. 2 *Inſt.* 206. And this power doth not ſeem to have been taken away by any ſtatute.

13. The crime of inceſt is excepted out of the general pardon of the 20 *G.* 2. *c.* 52.

Indictment for keeping a disorderly house.

Westmorland. THE *jurors for our lord the king upon their oath present, that* A. O. *late of* ——— *in the said county, labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and at divers other times as well before as after, with force and arms, at* ——— *aforesaid, in the county aforesaid, did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed, and disorderly house, and in his said house, for his own lucre and gain, certain evil and ill-disposed persons, as well men as women, of evil name and fame, and of dishoneſt conversation, to frequent and come together then, and the said divers other times, there unlawfully and wilfully did cause and procure; and the said men and women, in h said house, at unlawful times, as well in the night as in the day then and the said other times, there to be and remain, drinking, tipling, whoring, and misbehaving themselves, unlawfully and wilfully dia permit, and yet doth permit, to the great damage and common nuſance of all the subjects of our said lord the king, and against the peace of our said lord the king, his crown and dignity.*

Libel.

I. What it is.
II. Who are punishable for it.
III. How punishable.

I. What it is.

A Libel *is a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that is alive, or the memory of one that is dead.* Wood 740.

A malicious defamation] And the scandal which is expressed in a scoffing and ironical manner, is as properly a malicious defamation, as that which is expressed in direct terms; as where a person proposes one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar; and the like: which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expresly done so. 1 *Haw.* 194.

And from the same foundation it hath also been resolved, that a defamatory writing, expressing only one or two letters of a name, in such a manner, that from what goes before and follows after,

it muſt needs be underſtood to ſignify ſuch a particular perſon, in the plain, obvious, and natural conſtruction of the whole, and would be perfect nonſenſe if reſtrained to any other meaning, is as properly a libel, as if it had expreſſed the whole name at large; for it brings the utmoſt contempt upon the law, to ſuffer its juſtice to be eluded by ſuch trifling evaſions: And it is a ridiculous abſurdity to ſay, that a writing which is underſtood by every the meaneſt capacity, cannot poſſibly be underſtood by a judge and jury. 1 *Haw.* 194.

And it matters not whether the libel be true, or whether the party againſt whom it is made be of good or bad fame; for in a ſettled ſtate of government, the party grieved ought to complain, for any injury done to him, in the ordinary courſe of law, and not by any means to revenge himſelf, either by the odious courſe of libelling, or otherwiſe. 5 *Co.* 125. But this is to be underſtood, when the proſecution is by information or indictment; but in an action on the caſe, one may juſtify that it is true. *Wood* 740.

Of any perſon] Where a writing inveighs againſt mankind in general, or againſt a particular order of men, as for inſtance, men of the gown, this is no libel; but it muſt deſcend to particulars and individuals to make it a libel. 3 *Salk.* 224.

And it hath been agreed in the court of king's bench, that a writing full of obſcene ribaldry, without any kind of reflection upon any one, is not puniſhable at all by any proſecution at common law: yet it ſeems that the author may be bound to his good behaviour, as a ſcandalous perſon of evil fame. 1 *Haw.* 195.

But if the libel is only againſt a private perſon, yet it deſerveth ſevere puniſhment; for albeit the libel be againſt one, yet it inciteth all thoſe of the ſame family, kindred, or ſociety, to revenge, and ſo tendeth by conſequence to quarrels, and breach of the peace, and may be the cauſe of effuſion of blood, and of great inconvenience: But if it be againſt a magiſtrate, or other publick perſon, it is a greater offence; for it concerneth not only the breach of the peace, but the ſcandal of the government. 5 *Co.* 125.

Expreſſed either in printing or writing, ſigns or pictures] A libel is either in writing, or without writing: In writing, when an epigram, rhyme, or other writing is publiſhed to the contumely of another, by which his fame or dignity may be prejudiced; Without writing, may be by pictures, as to paint the party in any ſhameful and ignominious manner; or by ſigns, as to fix a gallows, or other reproachful and ignominious ſigns at a man's door. 5 *Co.* 125.

E. 7 *G.* Mayor of *Northampton*'s caſe. He ſent Lord *Halifax* a licence to keep a publick houſe, which the court ſaid was a libel in the caſe of a perſon of his quality, and granted an information for it. *Str.* 422.

Or the memory of one that is dead] For the offence is the ſame, whether the perſon libelled be alive or dead. 5 *Co.* 125.

II. Who are puniſhable for it.

It is certain, that not only he who compoſes a libel, or procures another to compoſe it, but alſo he who publiſhes, or procures another to publiſh it, are in danger of being puniſhed for it; and it is ſaid not to be material, whether he who diſperſes a libel knew any thing of the contents or effect of it or not; for, nothing would be more eaſy, than to publiſh the moſt virulent papers with the greateſt ſecurity, if the concealing the purport of them from an illiterate publiſher, would make him ſafe in diſperſing them. 1 *Haw.* 195.

Alſo it hath been ſaid, that if he who hath either read a libel himſelf, or hath heard it read by another, do afterwards maliciouſly read or repeat any part of it, in the preſence of others, or lend or ſhew it to another, he is guilty of an unlawful publication of it. 1 *Haw.* 195.

Alſo it hath been holden, that the copying of a libel ſhall be a concluſive evidence of the publication of it, unleſs the party can prove, that he delivered it to a magiſtrate to examine it. 1 *Haw.* 195.

And it hath been ruled, that the finding a libel on a bookſeller's ſhelf, is a publication of it by the bookſeller; and that it is no excuſe to ſay, that the ſervant took it into the ſhop without the maſter's knowledge; for the law preſumes the maſter to be acquainted with what the ſervant does. *Seſſ. C. V.* 1. *p.* 33. *K.* and *Dodd*, 10 *G.*

And it ſeems to be the better opinion, that he who firſt writes a libel dictated by another, is thereby guilty of making it, and conſequently puniſhable for the bare writing; for it was no libel, till it was reduced to writing: For the eſſence of a libel conſiſteth in the writing of it; for if a man ſpeaks ſuch words, unleſs the words be put in writing, it is not a libel. 2 *Salk.* 419. 1 *Haw.* 195.

Alſo it hath been reſolved, that the ſending of a letter full of provoking language to another, without publiſhing it, is highly puniſhable, as manifeſtly tending to a diſturbance of the peace. 1 *Haw.* 195.

But it hath been reſolved, that he who barely reads a libel in the preſence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his cuſtody, ſhall not in reſpect of any ſuch act be adjudged the publiſher of it. But the having in one's cuſtody a written copy of a libel publickly known, is an evidence of the publication of it. 1 *Haw.* 196.

The way for a man to keep himſelf out of danger in ſuch caſes is, if he finds a libel, and it be compoſed againſt a private perſon, he either may burn it, or forthwith deliver it to a magiſtrate; but if it concern a magiſtrate, or other publick perſon, he ought immediately to deliver it to a magiſtrate, to the intent that by examination and enquiry, the author may be found and puniſhed. 5 *Co.* 125.

III. How punishable.

There seemeth to be no doubt, but that the offenders may be condemned to pay such fine, and also to suffer such corporal punishment, as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender. 1 *Haw.* 196.

And it hath been adjudged, that libels, as having a direct and immediate tendency to a breach of the peace, are indictable before justices of the peace. 2 *Haw.* 40.

On an indictment setting forth the offence, *according to the tenor and to the effect following*, it was agreed by the court, that *to the effect following* had been naught, being vague and useless words; for the court must judge of the words themselves: but the words, *according to the tenor*, do correct the defect; for they import the very words themselves, for the *tenor* of a thing is the transcript and true copy of it, to which it may be compared: and therefore of words spoken there can be no tenor, because there is no written original. 2 *Salk.* 417. 3 *Salk.* 225.

And it must be proved to be written or published, in the county laid in the indictment; all matters of crime being local. *Read. Lib. State Tr. V.* 3. 774, 775. *V.* 4. 672.

Indictment for a libel.

THE *jurors for our lord the king upon their oath present, that* A. O. *late of* ——— *in the county of* ——— *gentleman, not having god before his eyes, but moved by the instigation of the devil, and falsly and maliciously contriving and intending to bring our said lord the king into hatred and infamy amongst his subjects, and to move sedition amongst the subjects of our said lord the king, did on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *aforesaid, in the county aforesaid, falsly, seditiously, and maliciously write and publish, and cause to be written and published, a certain false, seditious, and scandalous libel, intitled* ——— *In which said libel are contained, among other things, divers false, seditious, scandalous, and malicious matters, according to the tenor following, to wit,* ——— *And in another part of the same libel are contained divers other false, seditious, scandalous, and malicious matters, according to the tenor following* ——— *to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

Linen cloth.

FOR the duties on linen cloth printed or ſtained, ſee title **Exciſe.**

For journeymen and other workmen imbezilling the materials of the linen manufacture, ſee title **Servants.**

1. Any perſon, native or foreigner, may without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, ſet up and exerciſe the occupation of breaking, hickling, or dreſſing of hemp or flax; as alſo for making and whitening of thread; as alſo of ſpinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as alſo the miſtery of making twine or nets for fiſhery, or of ſtoving of cordage; as alſo the trade of making tapeſtry hangings. 15 *C.* 2. *c.* 15. *ſ.* 2. Who may ſet up trades in the linen manufacture.

And all foreigners that ſhall uſe any the trades aforeſaid three years, ſhall (taking the oaths of allegiance and ſupremacy before two juſtices near unto their dwellings) enjoy all privileges as natural born ſubjects. *ſ.* 3.

2. Whereas certain evil diſpoſed perſons, by ſundry devices, ſtretch linen cloth both in length and breadth, and then with battledoors or otherwiſe beat the ſame, caſting thereupon certain deceitful liquors mingled with chalk and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby looſened and made weak; If any perſon ſhall hereafter uſe the ſaid deceits, or do any other act with any linen cloth whereby it ſhall be made worſe, the ſaid cloth ſhall be forfeited, and the offender puniſhed by one month's impriſonment at the leaſt, and pay ſuch fine as the juſtices ſhall aſſeſs. 1 *El. c.* 12. *ſ.* 1. Spoiling linen cloth in dreſſing.

And the judges of aſſize, and juſtices of the peace or three of them (1 *Q.*) may hear and determine the ſame in their ſeſſions, by information, indictment, or upon the traverſe of any preſentment or indictment found before them. *ſ.* 2.

And if any perſon ſhall ſeize any ſuch deceitful linen cloth, he ſhall at the next ſeſſions, or before two juſtices (1 *Q.*) make due information of the offence and of the ſeizure, or elſe ſhall procure the offender to be indicted at the next ſeſſions, and ſhall alſo be bound by recognizance or obligation to purſue the ſame with effect, and to give evidence, and to pay the moiety of what he ſhall recover, to the ſheriff or other accountant to the uſe of the king. And the other half ſhall go to the informer or proſecutor. *ſ.* 3.

And the juſtices before whom the offence ſhall be tried, ſhall certify the ſame by eſtreat into the exchequer yearly at *Michaelmas* as they do other eſtreats, and thereupon the barons may make proceſs for ſo much thereof as appertaineth to the king, in like manner as for other fines. *ſ.* 4.

3. Every perſon who ſhall, by day or night, feloniouſly ſteal any linen, fuſtian, calico, or cotton cloth, or cloth worked, Stealing linen cloth.

woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn; linen or cotton tape, incle, filleting, laces, or any other linen, fuſtian, or cotton goods, laid to be printed, whitened, bowked, bleached, or dried, to the value of 10*s.* or ſhall knowingly buy or receive any ſuch wares ſtolen, ſhall be guilty of felony without benefit of clergy. 18 *G.* 2. *c.* 27.

Affixing counterfeit ſtamps on linen cloth.

4. If any perſon ſhall cauſe any ſtamps to be affixed to any foreign linens imported, in imitation of the ſtamps put on *Scotch* or *Iriſh* linens; he ſhall forfeit 5*l.* for each piece: Or if any perſon ſhall expoſe or pack up for ſale any foreign linens (knowing them to be ſo ſtamped) as the manufacture of *Scotland* or *Ireland*; he ſhall forfeit the ſame, and alſo 5*l.* for each piece. And if any perſon ſhall affix any counterfeit ſtamp on any linen of the manufacture of *Great Britain* or *Ireland*, in order to vend the ſame as linens duly ſtamped; he ſhall forfeit 5*l.* for each piece: And if any perſon ſhall expoſe or pack up for ſale, any ſuch linens, knowing them to be ſo ſtamped; he ſhall forfeit the ſame, and alſo 5*l.* for each piece. 17 *G.* 2. *c.* 30. *ſ.* 1.

And one juſtice may convict the offender on the oath of one witneſs, and may grant his warrant for diſtreſs and ſale; and for want of ſufficient diſtreſs, any juſtice, on proof thereof made on oath by the perſon executing the warrant, may commit him to gaol for ſix months, unleſs it be paid ſooner: Which penalty ſhall go to the informer, deducting 2*s.* in the pound to be paid to the conſtable who ſhall execute the warrant. *ſ.* 2.

Ling. Burning of it. See Burning.

Loom lace. See Buttons.

Lord's day.

Reſorting to church on the lord's day.

1. ALL perſons, not having reaſonable excuſe, ſhall reſort to their pariſh church or chapel (or to ſome congregation of religious worſhip allowed by the toleration act) on every *Sunday*; on pain of puniſhment by the cenſures of the church, or of forfeiting 1*s.* to the poor for every offence. 1 *El.* *c.* 2. *ſ.* 14, 24. To be levied by the churchwardens by diſtreſs, by warrant of one juſtice. 3 *J.* *c.* 4. *ſ.* 27, 28.

Sports on the lord's day.

2. King *James* the firſt, in 1618, publickly declared to his ſubjects, in what was called the book of ſports, theſe games following to be *lawful*, *viz.* dancing, archery, leaping, vaulting, maygames, whitſon ales, and morris dances; and did command that no ſuch honeſt mirth or recreation ſhould be forbidden to his ſubjects on *Sundays* after evening ſervice: But reſtraining all recuſants from this liberty; and commanding each pariſh to uſe theſe recreations by itſelf; and prohibiting all *unlawful* games, bear

bear baiting, bull baiting, interludes, and bowling by the meaner ſort. *Dalt. c.* 46.

After which it was enacted by the ſtatute of the 1 *C. c.* 1. that there ſhall be no concourſe of people *out of their own pariſhes* on the lord's day, for *any* ſports or paſtimes; nor any bear-baiting, bull baiting, interludes, common plays, or other *unlawful* exerciſes and paſtimes uſed by any perſons *within their own pariſhes*; on pain that every offender, being convicted within a month after the offence, before one juſtice, on view, or confeſſion, or oath of one witneſs, ſhall forfeit for every offence 3 *s.* 4 *d.* to the poor, to be levied by the conſtable and churchwardens by diſtreſs: In default of diſtreſs, the party to be ſet publickly in the ſtocks for 3 hours.

Exerciſing worldly callings on the lord's day.

3. By the 1 *J. c.* 22. No *ſhoemaker* ſhall ſhew, to the intent to put to ſale, any ſhoes, boots, buſkins, ſtartops, ſlippers, or pantofles, upon the *Sunday*; on pain of 3 *s.* 4 *d.* a pair, and the value thereof: to be recovered at the aſſizes, ſeſſions, or leet; one third to the king, one third to him who ſhall ſue, and one third to the town or lord of the leet. *ſ.* 28, 46, 50.

And by the 3 *C. c.* 1. No *carrier* with any horſe or horſes, nor waggonman with any waggon, nor wainman, with any wain, nor *drover* with any cattle, ſhall by themſelves, or any other, travel on the lord's day, on pain of 20 *s.* or if any *butcher*, by himſelf, or any other for him, with his privity and conſent, ſhall kill or ſell any victual, on the lord's day, he ſhall forfeit 6 *s.* 8 *d.* The conviction to be in ſix months before one juſtice, or mayor, on view, or confeſſion, or oath of two witneſſes; to be levied by the conſtable or churchwarden, by diſtreſs; or to be recovered in any court of record, in any city or town corporate, before the juſtices in ſeſſions; to be applied to the uſe of the poor, except that the juſtice may reward the informer or proſecutor with part of the forfeiture, not exceeding one third part.

And by the 29 *C.* 2. *c.* 7. it is further enacted, that no *drover*, *horſe courſer*, *waggoner*, *butcher*, *higler*, or any of their ſervants, ſhall travel, or come to his inn or lodging on the lord's day, on pain of 20 *s.* and in general, that no *tradeſman*, *artificer*, *workman*, *labourer*, *or other perſon*, ſhall do or exerciſe any worldly labour, buſineſs, or work of their ordinary callings, on the lord's day; (except works of neceſſity and charity; and except dreſſing of meat in families; and dreſſing and ſelling of meat in inns, or cooks ſhops, or victualling houſes, for ſuch as cannot otherwiſe be provided; and by the 9 *An. c.* 23. *ſ.* 20. except licenſed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender above 14 years of age forfeiting 5 *s.* and alſo that no perſon ſhall publickly *cry*, *ſhew forth*, *or expoſe to ſale*, any wares, merchandizes, fruit, herbs, goods or chattels whatſoever, on the lord's day (except crying and ſelling of milk, before nine in the morning, and after four in the afternoon; and except mackarel, which may be ſold on *Sundays*, before or after divine ſervice, by the 10 & 11 *W. c.* 24. *ſ.* 14.); on pain of forfeiting the ſame: And alſo that no perſon ſhall uſe, employ, or travel on the lord's day, with any *boat*, wherry, lighter,

lighter, or barge (unleſs allowed by a juſtice of the peace, on extraordinary occaſion; and except 40 watermen who may ply on the Thames on *Sundays* betwixt *Vaux-hall* and *Lime-houſe*, by the 11 & 12 *W.* *c.* 21. *ſ.* 13.) on pain of 5 *s.* and if any perſon offending in any of the premiſſes, ſhall be thereof convicted, in 3 months after the offence, before one juſtice, on view, or confeſſion, or oath of one witneſs, the juſtice ſhall give warrant to the conſtables or churchwardens, to ſeize the goods cried, ſhewed forth, or put to ſale, and to ſell the ſame; and to levy the other forfeitures by diſtreſs; to the uſe of the poor, except that the juſtice may out of the ſame reward the informer with any ſum not exceeding one third part. And for want of diſtreſs, the offender ſhall be ſet publickly in the ſtocks for two hours.

Serving proceſs on the lord's day.

4. No perſon, upon the lord's day, ſhall ſerve or execute any writ, proceſs, warrant, order, judgment, or decree (except in caſes of treaſon, felony, or breach of the peace), but the ſervice thereof ſhall be void; and the perſon ſerving the ſame ſhall be as liable to anſwer damages to the party grieved, as if he had done the ſame without any writ, proceſs, warrant, order, judgment, or decree. 29 *C.* 2. *c.* 7. *ſ.* 6.

But this doth not extend to eccleſiaſtical proceſs, as citations, or excommunications. *Cod.* 271.

A juſtice iſſued a warrant to the conſtable, to make a perſon to find ſureties for his *good behaviour:* the conſtable executed the warrant on a *Sunday*, and he was juſtified by the court; who reſolved, that a warrant for the good behaviour is a warrant for the *peace*, and more; and that this ſtatute is to be favourably interpreted for the peace. *Raym.* 250.

Robbery on the lord's day.

5. No hundred ſhall be anſwerable for any robbery on the lord's day: Nevertheleſs the inhabitants ſhall make hue and cry after the offenders, on pain of forfeiting to the king as much money as might have been recovered by the party robbed againſt the hundred, if he had been robbed on any other day. 29 *C.* 2. *c.* 7. *ſ.* 5.

Warrant on the 3 *C.* *c.* 1. and 29 *C.* 2. *c.* 7. to levy 20 *s.* on a carrier for travelling on the lord's day; which ſame will do, *mutatis mutandis*, for the other penalties under this title.

Weſtmorland { To the conſtable of ———

FORASMUCH *as* A. O. *of* ——— *in the county of* ——— *carrier, is duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *being the lord's day, commonly called* Sunday, *with his horſes into and through your ſaid pariſh of* ——— *did travel, contrary to the ſtatutes in that caſe made and provided, whereby*

whereby he hath forfeited the ſum of 20 s. *of lawful money of* England; *theſe are therefore to command you forthwith to levy the ſaid ſum of* 20 s. *by diſtraining the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum ſhall not be paid, together with the reaſonable charges of taking and keeping the ſame, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay the ſum of* 6 s. 8 d. *part of the ſaid ſum of* 20 s. *to* A. I. *of* ——— *yeoman, who informed me of the ſaid offence, and that you ſee the remaining ſum of* 13 s. 4 d. *employed to the uſe of the poor of your ſaid pariſh of* ——— *returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And you are to certify to me, with the return of this precept, what you ſhall have done in the execution thereof. Herein fail you not. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ———.

Lotteries. See **Gaming.**

Low wines. See **Exciſe.**

Lowbells. See **Game.**

Lunaticks.

1. NON *compos mentis* is of four kinds: Who.
First, Ideots; who are of *non ſane* memory from their nativity, by a perpetual infirmity.

Secondly, Thoſe that loſe their memory and underſtanding by the viſitation of god, as by ſickneſs, or other accident.

Thirdly, Lunaticks; who have ſometimes their underſtanding, and ſometimes not.

Fourthly, Drunkards; who by their own vicious act for a time deprive themſelves of their memory and underſtanding. 1 *Inſt.* 247.

2. He who incites a madman to do a murder, or other crime, is a principal offender, and as much puniſhable as if he had done it himſelf. 1 *Haw.* 2. Inciting him to commit a crime.

3. But ideots and lunaticks, who are under a natural diſability of diſtinguiſhing between good and evil, are not puniſhable by any criminal proſecution. 1 *Haw.* 2. Not puniſhable for criminal offences.

Yet drunkards ſhall have no privilege by their want of ſound mind; but ſhall have the ſame judgment as if they were in their right ſenſes. 1 *Inſt.* 247. 1 *Haw.* 2. 1 *H. H.* 32.

4. But if a perſon, who wants diſcretion, commit a treſpaſs, againſt the perſon or poſſeſſion of another; he ſhall be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2. Puniſhable for civil offences.

5. If

Becoming non compos before trial.

5. If one who hath committed a capital offence become *non compos* before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. *Hale's Pl.* 10. 1 *Haw.* 2.

How tried whether he is non compos.

6. By the common law, if it be doubtful whether a criminal, who at his trial in appearance is a lunatick, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff; and if it be found by them, that the party only feigns himself mad, and he still refuse to answer, he shall be dealt with as one that stands mute. 1 *Haw.* 2.

Whether he may bring an appeal.

7. An ideot cannot bring an appeal. 1 *Haw.* 162.

Whether he may be an approver.

8. Neither can he be an approver; because he can neither take the oath in that case required, nor wage battle. 3 *Inst.* 129.

Friends restraining him.

9. Any person may justify confining and beating his friend being mad, in such manner as is proper in such circumstances. 1 *Haw.* 130.

Overseers restraining him.

10. By the 17 *G.* 2. *c.* 5. it is enacted, that whereas there are sometimes persons, who by lunacy, or otherwise, are furiously mad, or are so far disordered in their senses, that they may be dangerous to be permitted to go abroad, it shall therefore be lawful for two or more justices where such lunatick or mad person shall be found, by warrant directed to the constables, churchwardens, and overseers of the place, or some of them, to cause such person to be apprehended, and kept safely locked up in some secure place, within the county or precinct, as such justices shall under their hands and seals direct and appoint, (and if such justices find it necessary) to be there chained, if the settlement of such person shall be within such county or precinct.

And if such settlement shall not be there, then such person shall be sent to his settlement by a vagrant pass *(mutatis mutandis)*; and shall be locked up or chained by warrant of two justices of the county or precinct, to which such person is so sent, in manner aforesaid:

And the reasonable charges of removing, and of keeping, maintaining, and curing such person, during such restraint (which shall be during such time only as such lunacy or madness shall continue), shall be satisfied and paid (such charges being first proved upon oath) by order of two justices, directing the churchwardens or overseers, where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands, as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next quarter sessions: But if such person hath not an estate to satisfy the same, over and above what shall be sufficient to maintain his family, then such charges shall be paid by the parish, town, or place, to which such person belongs, by order of two justices, directed to the churchwardens or overseers for that purpose. *s.* 20.

Provided, that any person aggrieved by any act of such justices out of sessions, may appeal to the next sessions, giving reasonable notice; whose order therein shall be final. *s.* 28.

But nothing herein shall restrain or abridge the power of the king, or lord chancellor; nor shall restrain or prevent any friend from taking them under their own care and protection. *S.* 21.

11. The king is the general guardian of ideots and lunaticks. 17 *Ed.* 2. *st.* 1. *c.* 9, 10. King the guardian of lunaticks.

12. A person of *non sane* memory shall not avoid his own act, by reason of this defect; but his heir or executor may. 4 *Co. Beverley*'s case. Whether he may avoid his own act.

15. If an ideot takes a wife, they are husband and wife in law, and their issue legitimate; for he is allowed to be capable of consenting to marriage. 1 *Sid.* 112. Whether he can consent to marriage.

But by the 15 *G.* 2. *c.* 30. Lunaticks, found so by inquisition by commission under the great seal; or any lunatick or person under a phrenzy, whose person and estate is vested in trustees by act of parliament, if they marry before they are declared of sound mind by the lord chancellor, or the trustees or major part of them respectively, every such marriage shall be void.

14. To make a will, it is not sufficient that the testator have memory to answer to familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his estate, with understanding and reason. 6 *Co.* 23. Whether he may make a will.

Lurcher. See Game.

Lutestrings. See Silks.

Madmen. See Lunaticks.

Maim.

1. MAIM is such a hurt of any part of a man's body, whereby he is rendred less able in fighting, either to defend himself, or annoy his adversary. 1 *Haw.* 111.

2. For the members of every subject are under the safeguard and protection of the law, to the end a man may serve his king and country, when occasion shall be offered: and therefore a person who maims himself, that he may have the more colour to beg, may be indicted and fined. 1 *Inst.* 127.

And by the like reason, a person who disables himself, that he may not be impressed for a soldier.

3. The cutting off, or disabling, or weakning a man's hand or finger, or striking out his eye, or foretooth, or castrating him, are said to be maims, but the cutting off his ear, or nose, were not esteemed maims at the common law, because they do not weaken, but only disfigure him. 1 *Haw.* 111, 112.

4. It is said, that anciently castration was punished with death; and other maims with the loss of member for member: but afterwards

wards no maim was punished in any case with the loss of life or member, but only with fine and imprisonment. 1 *Haw.* 112.

But now by the 22 & 23 *C.* 2. *c.* 1. (which is called the *Coventry* act, because it was made on the occasion of Sir *John Coventry*'s being assaulted in the street, and his nose slit) If any person, on purpose, and of malice forethought, and by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject, with intention in so doing to maim or disfigure him; the person so offending, his counsellors, aiders, and abettors (knowing of and privy to the offence) shall be guilty of felony without benefit of clergy; but not to work corruption of blood.

5. If a man attack another with intent to murder him, and he does not murder, but only maim him; the offence is nevertheless within this statute. 1 *Haw.* 112.

6. If the maim comes not within any of the descriptions in the act, yet it is indictable at the common law, and may be punished by fine and imprisonment: Or an appeal may be brought for it at the common law; in which the party injured shall recover his damages: Or he may bring an action of trespass; which kind of action hath now generally succeeded into the place of appeals in smaller offences not capital. 2 *Haw.* 157—160.

7. It doth not seem, that in maiming there may be accessaries after the fact. 2 *Haw.* 311.

For maiming of cattle, see title Cattle.

Mainprize. See Bail.

Maintenance.

BUYING *of titles* belongeth not to this place, but is treated of under a title of its own.

I. Of maintenance in general.
II. Of champerty in particular.
III. Of embracery in particular.

I. Of maintenance in general.

Concerning which I will shew,

i. What it is.
ii. How punishable by the common law.
iii. How by statute.

i. What

i. What it is.

1. Maintenance *(manu tenere) is an unlawful taking in hand or upholding of quarrels or ſides, to the diſturbance or hindrance of common right.* 1 Haw. 249.

2. And it is twofold;

One in the *country*; as where one aſſiſts another in his pretenſions to certain lands, by taking or holding the poſſeſſion of them for him by force or ſubtilty; or where one ſtirs up quarrels, and ſuits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is puniſhable at the king's ſuit by fine and impriſonment, whether the matter in diſpute any way depended in plea or not; but it is ſaid not to be actionable. 1 *Haw.* 249.

Another in the *courts of juſtice*; where one officiouſly intermeddles in a ſuit depending in any ſuch court, which no way belongs to him, by aſſiſting either party with money or otherwiſe, in the proſecution or defence of any ſuch ſuit. 1 *Haw.* 249.

3. Of this ſecond kind of maintenance, there are three ſpecies;

Firſt, where one maintains another, without any contract to have part of the thing in ſuit; which generally goes under the common name of *maintenance:*

Secondly, where one maintains one ſide, to have part of the thing in ſuit; which is called *champerty:*

Thirdly, where one laboureth a jury; which is called *embracery.* 1 *Haw.* 249.

4. But it ſeemeth to be agreed, that wherever any perſons claim a common intereſt in the ſame thing, as in a way, churchyard, or common, by the ſame title, they may maintain one another in a ſuit relating to the ſame. 1 *Haw.* 252.

5. Alſo, that whoever is any way of kin or affinity to the party, may counſel and aſſiſt him, but that he cannot juſtify the laying out any of his own money in the cauſe, unleſs he be either father, or ſon, or heir apparent. 1 *Haw.* 252.

6. Alſo, that any one in charity may lawfully give money to a poor man, to enable him to carry on his ſuit. 1 *Haw.* 253.

ii. How puniſhable by the common law.

It ſeemeth that all maintenance is not only *malum prohibitum* by ſtatute, but is alſo *malum in ſe,* and ſtrictly prohibited by the common law, as having a manifeſt tendency to oppreſſion; and therefore it is ſaid, that all offenders of this kind are not only liable to an action of maintenance at the ſuit of the party grieved, wherein they ſhall render ſuch damages as ſhall be anſwerable to the injury done to the plaintiff, but alſo that they may be indicted as offenders againſt publick juſtice, and adjudged thereupon to ſuch fine and impriſonment as ſhall be agreeable to the circumſtances of the offence. Alſo it ſeemeth, that a court of record may

commit a man for an act of maintenance done in the face of the court. 2 *Inst.* 212. 1 *Haw.* 255.

iii. How by statute.

1. By the 1 Ed. 3. st. 2. c. 14. *No person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.*

2. And by the 20 Ed. 3. c. 4. *None shall take in hand quarrels, other than their own, nor the same maintain, by them nor by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in disturbance of law, and hindrance of right.*

3. And by the 1 R. 2. c. 4. *None shall take or sustain any quarrel by maintenance in the country, on pain, if he is a great officer, as the king by advice of the lords shall ordain; if he is a lesser officer, he shall forfeit his office, and be imprisoned and ransomed at the king's will; and all other persons, on pain of imprisonment, and ransom at the king's will.*

4. And by the 32 H. 8. c. 9. *No person shall unlawfully maintain, or procure any unlawful maintenance, in any action, demand, or complaint, in any court having power to hold plea of lands; nor shall unlawfully retain any person for maintenance of any plea, to the disturbance or hindrance of justice; on pain of* 10*l. half to the king, and half to him that shall sue within one year.* s. 3, 6.

Unlawfully maintain] It seemeth that in an information on this statute, it is not sufficient to say, that the defendant maintained the party, without adding that he did it *unlawfully*. 1 *Haw.* 256.

Having power to hold plea of lands] It is said to have been adjudged, that maintenance of a suit in a spiritual court, is neither within this nor any other statute concerning maintenance. 1 *Haw.* 256.

To hold plea] It hath been holden that in an information on this statute, it is necessary to shew, that a plea was depending; and therefore that it is not sufficient to say that a bill was exhibited. 1 *Haw.* 256.

II. Of champerty in particular.

i. What it is.
ii. How punishable by the common law.
iii. How by statute.

i. What it is.

Champerty (from *campi parte*) is *the unlawful maintenance of a suit, in consideration of some bargain to have part of the lands or thing in dispute, or part of the gains.* 1 Haw. 256. 33 Ed. 1. st. 2.

Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a *ſpecies* of maintenance which is the *genus*. 2 *Inſt.* 208.

ii. How puniſhable by the common law.

Champerty was an offence at the common law, and as ſuch is puniſhable in like manner as hath been expreſſed in treating of maintenance in general. 2 *Inſt.* 208.

iii. How by ſtatute.

1. By the 3 Ed. 1. c. 25. *No officer of the king, by himſelf, nor by other, ſhall maintain pleas, ſuits, or other matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof, by covenant made between them; and he that doth, ſhall be puniſhed at the king's pleaſure.*

By covenant made] That is, by agreement either by word or writing; for albeit in the common ſenſe, a covenant is taken for an agreement by writing, yet in a larger ſenſe it is taken (as it is here) for an agreement by writing or by word. 2 *Inſt.* 209.

2. And by the 28 Ed. 1. c. 11. *No perſon whatſoever, for to have part of the thing in plea, ſhall take upon him the buſineſs that is in ſuit, nor ſhall any upon ſuch covenant give up his right to another; on pain that the taker ſhall forfeit to the king the value of the part he hath purchaſed for ſuch maintenance. But no perſon ſhall be prohibited hereby to have counſel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.*

3. And by the 33 Ed. 1. ſt. 3. *Any perſon who ſhall take for maintenance, or the like bargain, any ſuit or plea againſt another; he, and alſo they who conſent thereunto, ſhall be impriſoned three years, and make fine at the king's pleaſure.*

4. And by the 1 R. 2. c. 9. *A feoffment of lands, or gift of goods, for maintenance, ſhall be void, and the perſon diſſeized ſhall recover the lands againſt the firſt diſſeizors, with double damages, without having any regard to ſuch alienations.*

Shall be void] But it is ſaid, that it ſhall only be void with regard to him that hath right, and not between the feoffor and feoffee. 1 *Inſt.* 369.

5. And by the 31 El. c. 5. *The offence of champerty may be laid in any county, at the pleaſure of the informer.* ſ. 4.

III. Of embracery in particular.

i. What it is.
ii. How puniſhable by the common law.
iii. How by ſtatute.

i. What it is.

1. It ſeems clear, *that any attempt whatſoever to corrupt, or influence, or inſtruct a jury, or any way to incline them to be more favourable to the one ſide than to the other, by money, promiſes, letters, threats, or perſuaſions, is a proper act of embracery*, whether the juror on whom ſuch attempt is made give any verdict or not, or whether the verdict given be true or falſe. 1 *Haw.* 259.

2. And the law ſo far abhors all corruption of this kind, that it prohibits every thing which has the leaſt tendency to it, what ſpecious pretence ſoever it may be covered with, and therefore it will not ſuffer a mere ſtranger ſo much as to labour a juror to appear and act according to his conſcience. 1 *Haw.* 259.

3. But any perſon who may juſtify any other act of maintenance, may ſafely labour a juror to appear and give a verdict according to his conſcience; but no one whatſoever can juſtify the labouring a juror not to appear. 1 *Haw.* 260.

ii. How puniſhable by the common law.

There is no doubt, but that offences of this kind, do ſubject the offender either to an indictment or action, in the ſame manner as all other kinds of unlawful maintenance do by the common law. 1 *Haw.* 260.

iii. How by ſtatute.

1. By the 32 H. 8. c. 9. *No perſon ſhall embrace any jurors; on pain of* 10*l. half to the king, and half to him that ſhall ſue within a year.* ſ. 3, 6.

2. And by the 38 Ed. 1. ſt. 1. c. 12. *If any juror ſhall take any thing to give his verdict; both he, and the embracer, ſhall forfeit ten times as much, half to the king, and half to him that ſhall ſue.*

Upon which ſtatute is founded the writ of *Decies tantum.*

Indictment for maintenance.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *aforeſaid, in the county aforeſaid, did unjuſtly and unlawfully maintain and uphold a certain ſuit, which was then depending in the court of our ſaid lord the king, before the king himſelf, between* A. P. *plaintiff, and* A. D. *defendant, in a plea of debt, on the behalf of the ſaid* A. P. *againſt the ſaid* A. D. *contrary to the form of the ſtatute in ſuch caſe made and provided, and to the manifeſt hindrance and diſturbance of juſtice, and in contempt of our ſaid lord the king, and to the great damage of the ſaid* A. D. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Malt. See Excise.
Manslaughter. See Homicide.
Mariners. See Seamen.

Marriage.

BY the 26 *G.* 2. *c.* 33. If any person shall solemnize matrimony, in any other place than a church or publick chapel (unless by special licence from the Archbishop of *Canterbury*); or without publication of bans, or licence, in a church or chapel; he shall (on prosecution in 3 years) be adjudged guilty of felony, and transported for 14 years; and the marriage shall be void. *s.* 8, 9. But not to extend to *Scotland*, nor to the marriages of Quakers or Jews. *s.* 17, 18.

And if any person shall knowingly and wilfully insert, or cause to be inserted, in the register book, any false entry of any matter or thing relating to any marriage; or falsly make, alter, forge, or counterfeit, any such entry in the register, or any marriage licence, or cause the same to be done, or assent thereunto, or utter as true any such falsified register, or copy thereof, or any such forged licence; he shall be guilty of felony without benefit of clergy. *s.* 16.

For other matters relating to this title, see Women and Polygamy.

Master. See Servant, Apprentice.
Measures. See Weights.
Metal. See Pewter.
Metheglin. See Excise.

Militia.

THE militia of horſe and foot, in *England* and *Wales*, are computed to be near 200000. *Cham. Pr. St.* 129.

Concerning whom we will treat in the following order:

I. Of the appointing lieutenants and deputy lieutenants.
II. Conſtituting inferior officers.
III. Perſons chargeable to find ſoldiers.
IV. Inliſting.
V. Muſtering, training, and leading.
VI. Trophy money; for ammunition, carriages, and other neceſſaries.
VII. Power to ſearch for arms.
VIII. Conſtables to be aſſiſting.
IX. Puniſhment for deſertion or diſobedience.
X. Puniſhment for imbezilling horſe or furniture.
XI. Officers pay.
XII. Soldiers pay.
XIII. Penalties how recoverable.
XIV. Double coſts.

I. Of the appointing lieutenants and deputy lieutenants.

The king may iſſue commiſſions to ſuch perſons as he ſhall think fit, to be lieutenants for the ſeveral counties, cities, and places. 13 & 14 *C.* 2. *c.* 3. *ſ.* 2.

Which lieutenants ſhall preſent to his majeſty the names of ſuch perſons as they ſhall think fit, to be deputy lieutenants; and upon his majeſty's approbation of them, ſhall give them deputations accordingly: always underſtood, that the king have power to direct and order otherwiſe; and accordingly at his pleaſure, may appoint and commiſſionate, or diſplace ſuch officers. *id.*

And the ſaid deputy lieutenants ſhall obey ſuch orders as they ſhall receive from the lieutenants. *id. ſ.* 13.

But no peer ſhall be capable of acting as lieutenant or deputy lieutenant, unleſs he ſhall firſt before ſix of the privy council, or ſuch others as ſhall be authorized by the king, take the oaths of allegiance and ſupremacy, and this oath following; *I* A. B. *do declare and believe, that it is not lawful upon any pretence whatſoever, to take arms againſt the king; and that I do abhor that traiterous poſition, that arms may be taken by his authority againſt his perſon,*

or

or againſt thoſe that are commiſſioned by him in purſuance of ſuch military commiſſion: So help me god. id. ſ. 18.

And no perſon, under the degree of a peer, ſhall be capable of acting as lieutenant or deputy lieutenant, unleſs he ſhall firſt take the ſaid oaths; which oaths, any one juſtice, of the county or place, may adminiſter to ſuch lieutenant as is not a peer; and the ſaid lieutenant, or any one ſuch juſtice, may adminiſter the ſame to the deputy lieutenants not being peers. *id. ſ.* 19.

II. Conſtituting inferior officers.

The lieutenants may give commiſſions to ſuch perſons as they ſhall think fit, to be colonels, majors, captains, and other commiſſion officers. 13 & 14 *C.* 2. *c.* 3. *ſ.* 2.

Which officers likewiſe, before they ſhall be capable of acting, ſhall firſt take the ſaid oaths; to be adminiſtred by the lieutenants, and in their abſence, or by their directions, the deputy lieutenants, or any two of them. *id. ſ.* 19.

III. Perſons chargeable to find ſoldiers.

Who chargeable with horſe.

1. The lieutenants and deputies, or the major part of them then preſent, or in the abſence of the lieutenant, the major part of the deputy lieutenants then preſent, which major part ſhall be three at leaſt, ſhall have power to charge any perſon, in the county, city, or town corporate, where his eſtate lies, having reſpect unto, and not exceeding the following proportions; *viz.*

No perſon ſhall be charged within finding a horſe, horſeman, and arms, unleſs he have a revenue of 500 *l.* a year in poſſeſſion, or an eſtate of 6000 *l.* in goods or money, beſides the furniture of his houſe; and ſo proportionably for a greater eſtate, as they ſhall ſee cauſe, and think reaſonable. 13 & 14 *C.* 2. *c.* 3. *ſ.* 3.

Who chargeable with foot.

2. And they ſhall not charge any perſon with finding a foot ſoldier and arms, that hath not a yearly revenue of 50 *l.* in poſſeſſion, or a perſonal eſtate of 600 *l.* in goods or money, other than ſtock upon the ground; and after the ſaid rate proportionably for a greater or leſſer revenue or eſtate. *id.*

But they may require the conſtables to furniſh, at a reaſonable time and place to be appointed, on a penalty not exceeding 40 *s.* ſo many ſufficient arms, with wages and other incident charges, as they ſhall aſſeſs according to the ſaid proportions, upon revenue under 50 *l.* a year, or on perſonal eſtates leſs than 600 *l.* And in order thereunto, if any perſon ſhall on demand refuſe or neglect to provide a foot ſoldier or ſoldiers according to the proportions aforeſaid, or to pay any ſums of money whereat he ſhall be aſſeſſed by a pound rate (according to a liſt ſigned by the lieutenants and deputies or three of them) towards defraying the neceſſary charge in providing ſuch arms as aforeſaid, the conſtable by warrant may levy ſuch ſum by diſtreſs and ſale, rendring the overplus, charge of diſtraining being firſt deducted: and the tenant ſhall pay the ſame, and deduct it out of his next rent; and in default thereof, his goods alſo ſhall be liable to be diſtrained and ſold. 15 *C.* 2. *c.* 4. *ſ.* 4. 5.

But no perſon having an eſtate of 200*l.* a year, or perſonal eſtate of 2400*l.* ſhall be charged with finding any foot. 15 *C.* 2. *c.* 4. *ſ.* 18.

Who may be charged either with horſe or foot.

3. And they may charge any perſon having an eſtate of 100*l.* a year, and under 200*l.* or who hath a perſonal eſtate of 1200*l.* and under 2400*l.* towards the finding of foot or horſe, as to them ſhall ſeem moſt expedient. 15 *C.* 2. *c.* 4. *ſ.* 18.

None chargeable with both horſe and foot.

4. But they ſhall not charge any perſon with finding both horſe and foot in the ſame county. 13 & 14 *C.* 2. *c.* 3. *ſ.* 3.

Two or more may be charged together.

5. And they may impoſe the finding of horſe, horſeman, and arms; by joining two, three, or more perſons together in the charge. 13 & 14 *C.* 2. *c.* 3. *ſ.* 4.

But no perſon not having 100*l.* a year in poſſeſſion in lands, leaſehold or copyhold, or 1200*l.* perſonal eſtate, ſhall be compellable to contribute in finding any horſe and horſeman. *id. ſ.* 5.

Perſon chargeable with horſe, not to be charged with foot.

6. And no perſon chargeable to find a horſe and horſeman, or to be contributory thereunto, ſhall for the ſame eſtate be chargeable towards finding a foot ſoldier with arms, or contributory thereunto. 13 & 14 *C.* 2. *c.* 3. *ſ.* 4.

Who ſhall find, and who contribute.

7. Where two or more are charged to find any horſe or foot ſoldier and arms, three deputy lieutenants may appoint who ſhall find the ſame, and who ſhall be the contributors, and ſettle the ſums to be paid by every contributor, in caſe the ſame contribution be not aſcertained by agreement of the parties. 10 & 11 *W.* *c.* 12. *ſ.* 3.

Perſons may be examined on oath.

8. And for the better diſcovery of the ability of the perſons ſo to be aſſeſſed and charged, and of all miſdemeanors tending to the hindrance of the ſervice, they may examine on oath ſuch perſons as they ſhall judge neceſſary or convenient, or ſhall be produced by the party charged or accuſed, other than the perſons themſelves to be aſſeſſed or accuſed. 13 & 14 *C.* 2. *c.* 11.

Hearing and determining complaints.

9. And they may hear complaints, and give redreſs, according to the merits of the cauſe. 13 & 14 *C.* 2. *c.* 3. *ſ.* 5.

Peers how to be charged.

10. No peer ſhall be charged otherwiſe than as follows; *viz.* the king may iſſue out commiſſions under the great ſeal, to ſo many peers (not fewer than 12) as he ſhall think fit; who, or any 5 of them, ſhall have power to aſſeſs all or any peers, according to the proportions herein mentioned (except the monthly taxes hereafter following), and to execute all the powers of this act, as well for laying aſſeſſments, as impoſing of penalties (impriſonment only excepted). Which aſſeſſment or charge ſo made, and penalties impoſed, ſhall be certified to the lieutenants. And in caſe of default in performance of any thing to be done or paid by any peer, the lieutenants and deputies, or any three of them, may cauſe diſtreſſes to be taken in the lands of ſuch defaulter; and if ſatisfaction ſhall not be made in one week after ſuch diſtreſs taken, then the ſame to be ſold: And if a tenant be diſtrained, he may deduct the ſum levied out of his next rent. 13 & 14 *C.* 2. *c.* 3. *ſ.* 33.

Officer how chargeable.

11. Every commiſſioned foot officer ſhall be exempted from finding, or contributing to find, any horſe or foot ſoldier, for his whole eſtate, if it is but charged with one horſe, or a leſs charge,

or for such part of his estate as is charged with one horse, if his whole estate be charged with a greater charge than one horse in the county or lieutenancy where he so serves as a foot officer, in respect of the expence which the said employment doth necessarily engage him in. 15 C. 2. c. 4. s. 9.

Papists how to be charged.

12. Where any papist, reputed papist, or other person refusing to take the oaths, is chargeable in respect of his estate, the lieutenant, or in his absence the deputies, or three of them, may appoint such person as they shall think most meet, to furnish the same; and may charge the same estate with the payment of the yearly sum of 8 l. for a horse, horseman, and arms, and of 30 s. for a foot soldier and arms. And if he shall not pay the same on demand, they may by their warrant levy the same by distress and sale of the goods of such person, or of his tenants, rendring the overplus, all necessary charges in levying thereof being first deducted; and such tenant shall deduct the same out of his rent. 10 & 11 W. c. 12. s. 2.

Persons residing out of the liberty, how to be charged.

13. Where any person shall be charged in the county, city, or place, where he doth not reside, they shall send notice of the charge, if he have any land in his own occupation, to such person as he employs as his servant in managing the same; and if all his estate be let to farm, then to one or two of the most sufficient tenants; who shall forthwith, with all convenient speed, convey the same to their master or landlord; and in such time as shall be appointed, bring an account of his answer: And on neglect or refusal of the landlord, to provide such horse or foot, as is duly charged upon him, for the yearly rent reserved upon every demise or other grant, and not otherwise, within the time limited; then the tenant shall provide and do, as the landlord in that behalf ought to have done: And if the tenant shall refuse or neglect, within the time limited; the lieutenants, and in their absence, or by their directions, the deputies, or two of them, may levy by their warrant all such penalties as are appointed by this act, by distress and sale of the offender's goods. 13 & 14 C. 2. c. 3. s. 16.

And the tenant may defalk out of his next rent, all such money as he shall necessarily lay out in providing the same, or shall be levied upon him by distress for any default; unless the landlord shall make it appear, in two months after such levying, before the lieutenant, or in his absence, or by his direction, the deputies or any two of them, that the default and penalty was occasioned by the tenant's wilful neglect. *id.* s. 17.

But this shall not avoid any covenant between landlord and tenant, concerning the finding horses or arms, or the bearing of any charges by any tenant; but all charges shall be born by such tenant, according to the agreement. *id.* s. 29.

Penalty on persons not furnishing.

14. If any person shall refuse or neglect, by a reasonable time to be appointed, to provide such horse, horseman, arms, and other furniture, or to pay such sum towards providing the same as aforesaid; the lieutenants and deputies, or three of them, may inflict a penalty on such person not exceeding 20 l. and by their warrant may levy such sum, or the value of such horse, arms, and

and furniture, and such penalty inflicted, by distress and sale, rendring the overplus, all necessary charge in levying thereof being first deducted; the same to be employed to the uses in default whereof the same was imposed. 13 & 14 C. 2. c. 3. f. 9.

And if any person shall refuse or neglect, by a reasonable time to be appointed, to provide and furnish such foot soldier and arms, as shall be charged upon him; the lieutenants and deputies, or three of them, may inflict a penalty not exceeding 5 *l.* to be employed to the uses in default whereof it was imposed: And the constable, by warrant for that purpose, may levy such sum by distress and sale, rendring the overplus, charges of distraining being first deducted; and the tenant shall pay the same, and deduct it out of his next rent, and in default thereof his goods also shall be liable to be distrained and sold. 15 C. 2. c. 4. f. 3, 5.

And if any person charged as a *contributor*, being an inhabitant, shall refuse to pay his proportion on demand; or if he be not an inhabitant, if his tenant shall not pay the same upon demand; three deputy lieutenants by their warrant may levy the same by distress and sale, rendring the overplus, all necessary charge in levying thereof being first deducted; and such tenant may deduct the same out of his rent. 10 & 11 *W.* c. 12. f. 3.

None compellable to serve in person.

15. But no person charged with the finding horse or foot, or with contributing thereunto; shall be compellable to serve in person, but may find one to serve for him, to be approved by the captain; subject nevertheless to be altered upon appeal to the lieutenant, or in his absence to two deputy lieutenants. 13 & 14 C. 2. c. 3. f. 25.

IV. Inlisting.

Every man who shall serve in his own person, or such person as shall be accepted in his stead, shall at the next muster of his troop or company, give in his name and place of abode, unto such person as the lieutenant, or in his absence, or by his direction, any two deputy lieutenants, shall appoint; to the end that the same may be listed. 13 & 14 C. 2. c. 3. f. 25.

But he shall not be capable of acting as a soldier, unless he first take the said oaths abovementioned, to be administred by the lieutenant, or in his absence, or by his direction, the deputy lieutenants, or any two of them. *id.* f. 19.

V. Mustering, training, and leading.

Power to raise and lead.

1. By the 13 & 14 C. 2. c. 3. The lieutenants shall have power to call together the militia, and to arm and array them, and form them into companies, troops, and regiments, and in case of insurrection, rebellion, or invasion, them to lead, conduct, and employ, or cause them to be led, conducted, and employed, as well within the several counties, cities, and places for which they shall be commissioned respectively, as also into any other counties and places, for the suppressing of all such insurrections and rebellions, and repelling of invasions, as may happen

to

to be, according as they shall receive directions from his majesty. *s.* 2.

And by the 15 *C.* 2. *c.* 4. The lieutenants, and in their absence, or by their directions, the deputy lieutenants, or two of them, shall have power to lead, train, and exercise, or by warrant under their hands and seals, cause to be led, trained, and exercised, the persons so raised, arrayed, and weaponed, *s.* 1.

But nothing herein shall extend to the giving any power for marching any subjects out of the realm, otherwise than by the laws of *England* ought to be done. 13 & 14 *C.* 2. *c.* 3. *s.* 32.

2. The ordinary times for training, exercising, and mustering, shall be these; The general muster and exercise of regiments, not above once a year; The training and exercising of single companies, not above four times a year, unless special directions be given by the king or his privy council; And such single companies and troops shall not at any one time be continued in exercise above the space of two days; And at a general muster and exercise of regiments, no officer or soldier shall be constrained to stay above four days together from their habitations. *id. s.* 21. Time of mustering.

3. At every such muster and exercise, every musqueteer shall bring with him half a pound of powder, and half a pound of bullets; and every musqueteer that shall serve with a match lock, shall bring with him 3 yards of match; and every horseman shall bring with him a quarter of a pound of powder, and a quarter of a pound of bullets; all which shall be at the charge of him who provides the said soldiers and arms: on pain of 5 *s.* for every omission. 13 & 14 *C.* 2. *c.* 3. *s.* 21. 15 *C.* 2. *c.* 4. *s.* 7. Accoutrements.

And the arms offensive and defensive, with the furniture for horse, shall be as follows; the defensive arms, a back, breast, and pot, pistol proof; the offensive arms, a sword and a case of pistols, the barrels not under 14 inches in length; the furniture for the horse, a great saddle or pad with burrs and straps to affix the holsters unto, a bit and bridle, with a pectoral and crupper: for the foot, a musqueteer shall have a musket, the barrel not under 3 foot in length, and the gauge of the bore to be for 12 bullets to the pound, a collar of bandileers, with a sword: a pikeman to be armed with a pike of ash, not under 16 foot in length (head and foot included), with a back, breast, head-piece, and sword. 13 & 14 *C.* 2. *c.* 3. *s.* 21.

4. The muster master shall be an inhabitant of the county. 15 *C.* 2. *c.* 4. *s.* 6. Muster master.

And once a year each soldier shall pay to him such sum, not exceeding 1 *s.* for a horseman, and 6 *d.* for a footman, as the lieutenants and deputies, or 3 of them, shall under their hands and seals direct; who shall have power to levy the same, by distress and sale of the goods of the persons charged to find such horseman, or foot soldier, unless the default be by the neglect of such soldier, who in that case shall be accountable for the same. *id.*

5. If any person charged shall refuse or neglect to send in, or deliver his horse, arms, or other furniture, at the beat of drum, sound of trumpet, or other summons; the lieutenants and deputies, Penalty on not furnishing.

ties, or three of them, may inflict a penalty not exceeding 5 *l.* to be levied by distress and sale, rendring the overplus, necessary charges for levying being first deducted. 13 & 14 *C.* 2. *c.* 3. *s.* 10.

Exception as to corporations.

6. Provided, that no officer or soldier of the militia, belonging to any city, borough, or town corporate, being a county of it self, or to any other corporation or port town, who have used to be mustered only within their own precincts, shall be compellable to appear out of such precincts, at any muster or exercise only. 13 & 14 *C.* 2. *c.* 3. *s.* 28.

VI. Trophy money; for ammunition, carriages, and other necessaries.

And for furnishing ammunition and other necessaries, the lieutenants and deputies, or three of them, shall have power to lay rates on the respective counties and places, not exceeding in the whole in any one year the proportion of a fourth part of one month's assessment in each county, after the rate of 70000 *l.* a month, charged by the act of the 12 *C.* 2. *c.* 29. Which shall be assessed, collected, and paid by such persons, and according to such directions as shall be given by the lieutenants and deputies, or three of them; under the like penalties, and by the like ways and means, as are prescribed in the said act. 13 & 14 *C.* 2. *c.* 3. *s.* 7.

Which said act of the 12 *C.* 2. *c.* 29. having been long since expired, is omitted out of the several editions of the statutes at large, but is supplied in *Cay*'s abridgment, as follows:

The said act of the 12 *C.* 2. *c.* 29. directs the sum of 70000 *l.* a month to be raised in like manner as by the act of the 12 *C.* 2. *c.* 21. which act did direct the same to be raised, according to the proportions, and in such manner as by an ordinance of both houses made in his majesty's absence: Which ordinance was as followeth;

That is to say, there shall be raised an assessment of 70000 *l.* a month, in these proportions,

On the county of

	l.	*s.*	*d.*
Bedford	933	6	8
Berks	1088	17	10
Buckingham	1283	6	8
Cambridge	1102	10	0
Isle of Ely	367	10	0
Chester county	770	0	0
City	85	11	2
Cornwall	1633	6	8
Cumberland	108	0	0
Derby	933	6	8
Devon	3003	15	6
Dorset	1311	10	6
Town of Pool	10	14	0
Durham	153	14	4
Essex	3500	0	0
Gloucester	1626	6	8
City	162	11	2
Hereford	1166	13	4
Hertford	1400	0	0
Huntington	622	4	6
Kent	3655	11	2
Lancaster	933	6	8
Leicester	1088	17	8
Lincoln	2722	4	10
Middlesex	1788	17	10
London	4666	13	4
Northampton	1400	0	0
Nottingham	903	4	4
Town	30	2	4
Norfolk	3624	8	10

Norwich

	l.	s.	d.
Norwich —	186	13	4
Northumberland	179	19	10
Newcaſtle —	35	11	8
Oxon ——	1127	15	6
City ——	107	6	8
Rutland ——	272	4	6
Salop ——	1322	4	4
Stafford ——	919	6	8
Litchfield —	14	0	0
Somerſet ——	2722	4	6
Briſtol ——	171	2	2
Southampton —	2022	4	4
Suffolk ——	3655	11	2
Surrey ——	1565	5	6
Southwark —	184	14	6
Suſſex ——	1905	11	2
Warwick ——	1244	8	10
Weſtmorland —	73	19	4
Wilts ——	1944	8	10
Worceſter ——	1182	4	4
City ——	62	4	6
York ——	3043	8	10
Kingſton —	67	13	4
Angleſea ——	135	14	4
Brecknock —	361	13	4
Cardigan —	213	10	0
Carmarthen —	352	6	8
Carnarvan —	202	4	4
Denbigh ——	272	4	6
Flint ——	135	14	6
Glamorgan —	458	17	8
Merioneth —	124	8	10
Monmouth —	466	13	4
Montgomery —	295	11	0
Pembroke ——	406	0	0
Radnor ——	254	6	8
Haverford Weſt —	14	11	8
Berwick — —	5	16	8

And the commiſſioners ſhall cauſe the proportions to be equally aſſeſſed; and appoint aſſeſſors in each pariſh, who ſhall aſſeſs the ſame by a pound rate, according to all eſtates both real and perſonal, within the limits of their pariſhes.

And in caſe the way of aſſeſſing by a pound rate ſhall prove obſtructive to the ſpeedy bringing in of the aſſeſſment; the commiſſioners may direct the aſſeſſors to aſſeſs the ſame, according to the moſt juſt and uſual way of rates practiſed in ſuch places. Provided that the apportionment of the aſſeſſment ſhall not be drawn into precedent.

And no privileged place ſhall be exempted from the aſſeſſment.

But nothing contained in this ordinance ſhall charge any maſter, fellow, or ſcholar of any college in either of the univerſities, or of *Wincheſter*, *Eaton*, or *Weſtminſter*, or in any other free ſchools, or any reader, officer, or miniſter of the ſame, or of any hoſpitals, or almſhouſes, in reſpect of any profit ariſing in reſpect of the ſaid places; nor charge any houſes or lands belonging to *Chriſt's hoſpital*, *Bartholomew*, *Bridewell*, *Thomas*, and *Bethlehem*. But their tenants ſhall pay for ſo much as their leaſes are yearly worth, over and above the rents reſerved.

Perſons in *London* ſhall be aſſeſſed in the pariſhes where they dwell: And perſons out of *London*, having any office in *London*, ſhall be aſſeſſed where they dwell.

And the aſſeſſors ſhall deliver one copy of the aſſeſſment unto the commiſſioners; who ſhall ſign and ſeal two duplicates, and deliver one to the ſub collectors, with warrant to collect; and deliver the other to the receiver general.

And if any difference ariſe between landlord and tenant concerning the rates, the commiſſioners ſhall ſettle the ſame; and perſons aggrieved by being over rated, on complaint in ſix days after demand

demand to the commiſſioners who allowed the aſſeſſment, may by them be relieved.

And if any controverſy ſhall ariſe which concerns any of the commiſſioners, he ſhall withdraw.

On non-payment, the collectors may diſtrain; and in the day time, taking with them the conſtable, may break open any houſe, cheſt, or box where the goods are. And if any queſtion ariſe upon the taking ſuch diſtreſs, the ſame ſhall be determined by the commiſſioners.

And if perſons convey their goods, the commiſſioners may impriſon them (not being peers) till payment; and tenants may deduct the ſame out of their rent.

And if the proportions be not fully paid, nor can be levied, the commiſſioners may reaſſeſs.

And if any perſon ſhall wilfully neglect to perform his duty in the execution of this ordinance, the commiſſioners may fine him, not exceeding 20 *l.* to be levied by diſtreſs, and paid to the receiver general.

And the receiver general ſhall have 1 *d.* in the pound; the ſub-collectors 1 *d.* the head collectors 1 *d.* and the commiſſioners clerks 1 *d.*

But nothing herein ſhall be drawn into example, to the prejudice of the ancient rights belonging to the peers.

And ſo much concerning this ordinance of the two houſes; in which we may obſerve the land tax acts in *embryo*.

And the ſame power which the commiſſioners had by this ordinance, the lieutenants and deputy lieutenants ſeem to have by the act of the 13 & 14 *C.* 2. with which we do now proceed.

The lieutenants and deputies, or the chief officers upon the place, in the reſpective counties and places, may charge carts, waggons, wains, and horſes, for the carrying of powder, match, bullet, and other materials, allowing 6 *d.* a mile outward only, to every ſuch cart, waggon and wain with five horſes, or ſix oxen, and ſo proportionably; and for every horſe employed out of waggon or cart 1 *d.* upon the marching of any regiment, company, or troop, on occaſion of invaſion, inſurrection, or rebellion. 13 & 14 *C.* 2. *c.* 3. *ſ.* 8.

And the lieutenants ſhall appoint one or more treaſurers, or clerks, for receiving and paying ſuch monies when levied; of all which receipts and diſburſements thereof, they ſhall every ſix months give their accounts in writing upon oath, to the lieutenants and deputies, or 3 of them: which account ſhall be forthwith certified to the privy council, and a duplicate thereof ſhall be certified to the juſtices at the next ſeſſions. *id. ſ.* 12.

Always provided, that the lieutenants or their deputies ſhall not iſſue warrants for raiſing any trophy money, till the juſtices in ſeſſions ſhall have examined, ſtated, and allowed the accounts of the trophy money collected for any preceding year, and certified ſuch examination under the hands and ſeals of four or more ſuch juſtices. 10 *An. c.* 25. *ſ.* 4.

VII. Power to ſearch for arms.

The lieutenants, or two of their deputies, may by warrant under their hands and ſeals, imploy ſuch perſons as they ſhall think fit (of which a commiſſioned officer, and the conſtable or his deputy, or in their abſence ſome other perſon bearing office in the pariſh where the ſearch ſhall be, ſhall be two) to ſearch for and ſeize all arms in the cuſtody of any perſon, whom the lieutenants or two of their deputies ſhall judge dangerous to the peace of the kingdom, and to ſecure the ſame, and thereof to give account to the lieutenants, and in their abſence, or by their directions, to the deputies, or two of them: Provided, that no ſearch be made in any houſe between ſun-ſetting and ſun riſing, other than in cities or their ſuburbs, and towns corporate, market towns, and houſes within the bills of mortality, where they may ſearch in the night time, if the warrant ſo direct; and in caſe of reſiſtance, to enter by force: And no dwelling houſe of a peer to be ſearched, but by immediate warrant from the king, or in the preſence of the lieutenant or a deputy lieutenant: And in all places and houſes whatſoever, where ſearch is to be made, it ſhall be lawful in caſe of reſiſtance, to enter by force. And the arms ſo ſeized may be reſtored to the owners again, if the lieutenants, or in their abſence as aforeſaid, their deputies, or two of them, ſhall ſo think fit. 13 & 14 *C.* 2. *c.* 3. *ſ.* 14.

VIII. Conſtables to be aſſiſting.

All high conſtables, petty conſtables, and other officers and miniſters, ſhall be aiding and aſſiſting to the lieutenants and their deputies, or any of them. 13 & 14 *C.* 2. *c.* 3. *ſ.* 15.

IX. Puniſhment for deſertion or diſobedience.

The yearly acts againſt mutiny and deſertion do not extend to the militia.

But if any of the militia ſhall not appear and ſerve, compleatly furniſhed with horſe and arms and other furniture, at the beat of drum, ſound of trumpet, or other ſummons; the lieutenants, and in their abſence, or by their directions, the deputies, or two of them, if the default be in ſuch perſon, may impriſon him for five days; or may inflict a penalty, if he is a horſeman, not exceeding 20*s.* and if a footman, not exceeding 10*s.* to be paid down without delay. 13 & 14 *C.* 2. *c.* 3. *ſ.* 10.

And the lieutenants or deputies, or chief officers upon the place, may impriſon mutineers, and ſuch ſoldiers as do not their duty at the days of muſter and training; and may inflict for puniſhment for every ſuch offence, any pecuniary mulct not exceeding 5*s.* or impriſonment not exceeding twenty days. 13 & 14 *C.* 2. *c.* 3. *ſ.* 8.

And ſuch perſon duly liſted, ſhall not be exchanged, or deſert, or be diſcharged, but by the leave of the lieutenant, or two deputies,

puties, or his captain, upon reasonable cause, first obtained in writing under hand and seal; on pain of 20*l.* to be levied as other penalties; and for non payment, or want of distress, to be committed to the common gaol of the county, not exceeding three months. *id. s.* 25.

X Punishment for imbezilling horse or furniture.

If any person shall detain or imbezil his horse, arms, or furniture, the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person, may imprison him till he have made satisfaction.

XI. Officers pay.

For satisfaction of the officers for their pay, during such time (not exceeding one month) as they shall be with their soldiers in actual service, provision shall be made by the king out of the treasury. 13 & 14 *C.* 2. *c.* 3. *s.* 7.

And the lieutenants and deputies, or three of them, shall have power to dispose of so much of the said fourth part of the 70000*l.* a month, to the inferior officers, for their pains and encouragement, as to them shall seem expedient. 15 *C.* 2. *c.* 4. *s.* 12.

XII. Soldiers pay.

Every person charged shall (on pain of 5*s.*) pay on demand 2*s.* 6*d.* a day to each trooper, and shall (on pain of 2*s.*) pay on demand 1*s.* a day to each foot soldier, for so many days as they shall be absent from their dwellings or callings, by occasion of muster or exercise, unless some certain agreement be made to the contrary before good witness; and the said penalty is to be paid to such soldier, to whom his pay was denied; the respective penalties to be demanded in six weeks after default, or at or before the next muster or exercise, and not afterwards. 15 *C.* 2. *c.* 4. *s.* 2.

And in case of invasions, insurrections, or rebellions, whereby occasion shall be to draw out such soldiers into actual service; the persons so charged shall provide each their soldier with pay in hand not exceeding one month's pay, as shall be directed by the lieutenants, and in their absence, or by their directions, by the deputies or any two of them. 13 & 14 *C.* 2. *c.* 3. *s.* 7.

For the repayment whereof, provision shall be made by the king out of the treasury. *id.*

And in case a month's pay shall be provided and advanced as aforesaid, no person who shall have advanced his proportion thereof, shall be charged with any other like month's payment, until he shall have been reimbursed the said month's pay; and so from time to time, the month's pay by him last before provided and advanced. *id.*

XIII. Penalties

XIII. Penalties how recoverable.

The forfeitures, penalties, and payments by the 15 *C.* 2. *c.* 4. not otherwiſe herein directed, may be recovered by warrant under the hands and ſeals of the lieutenants and deputies, or three of them, by diſtreſs and ſale; and if ſufficient diſtreſs cannot be found, then the party to be impriſoned till ſatisfaction ſhall be made. 15 *C.* 2. *c.* 4. *ſ.* 16.

XIV. Double coſts.

Perſons ſued on either of the acts of the 13 & 14 *C.* 2. *c.* 3. or 15 *C.* 2. *c.* 4. may plead the general iſſue, and have double coſts. And the action muſt be commenced in ſix months, and in the proper county. 15 *C.* 2. *c.* 4. *ſ.* 13, 14.

Miller.

BY an ancient ordinance, *Hawk. Stat. V.* 1. *p.* 181. The toll of a mill ſhall be taken according to the cuſtom of the land, and according to the ſtrength of the watercourſe, either to the twentieth or four and twentieth corn.

And yet in ſome places the millers do claim and take the ſixteenth part: and where the cuſtom hath been ſo uſed time out of mind, perhaps it may be good and warrantable. *Dalt. c.* 112.

And Mr. *Dalton* ſays, the miller ought to take but one quart for grinding of one buſhel of hard corn, but if he fetch and carry back the griſt to the owner, he may take two quarts of hard corn; and this hard corn is intended of wheat, rye, meſlin (which is wheat and rye mixed). And for malt, the miller ſhall take but half ſo much toll as he taketh for hard corn, that is, one pint in the buſhel, for that malt is more eaſily ground than wheat or rye: But if the miller do fetch to his mill, and carry back the malt to the owner's houſe, then the miller alſo ſhall have double toll. *Dalt. c.* 112.

But, by *Holt* Ch J. the toll of a mill muſt be regulated by cuſtom; and if the miller takes more than the cuſtom warrants, it is extortion: But if it is a new mill, there the miller is not reſtrained to any certain toll; but the perſons who will have their corn ground there, muſt comply with the miller's demands; and whatſoever he takes, it is not extortion, becauſe it is the voluntary agreement of the parties. L. *Raym.* 149.

16 *G.* 2. *K.* and *Wood.* The defendant, being a miller, was indicted for *changing* corn delivered to him to be ground, and giving bad corn inſtead of it. It was moved to quaſh it, becauſe only a private cheat, and not of a publick nature. But it was anſwered, that being a cheat in the way of trade, it concerned the

publick, and therefore was indictable. And the court was unanimous not to quash it. *Sess. Cas. V.* 1. 217.

Altho' every larceny implies a trespass, and a felonious *taking* of the thing stolen; yet it hath been resolved, that even those who have the possession of goods by the delivery of the party, as a miller who has corn delivered to him to grind, may be guilty of felony by taking away part thereof with an intent to steal it. 1 *Haw.* 90.

Millers are not to be common buyers of any corn, to sell the same again, either in corn or meal; but ought only to serve for the grinding of corn that shall be brought to their mills. *Dalt. c.* 112.

Minister. See Publick worship.
Misadventure. See Homicide.

Misdemeanor.

THIS word in its usual acceptation is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine, or imprisonment, or both. *Barl.*

Misprision of felony. See Felony.
Misprision of treason. See Treason.
Mittimus. See Commitment.
Money. See Coin.
Murder. See Homicide.
Muster. See Soldiers, Militia.

Mute.

THE whole learning relating to this title, will be comprehended in the explication of the statute of *Westminster* 1. *c.* 12. which is as follows:

Notorious felons, and which openly be of evil name, and will not put themselves in inquests of felonies that men shall charge them with, before the justices at the king's suit, shall have strong and hard imprisonment,

priſonment, as they which refuſe to ſtand to the common law of the land. But this is not to be underſtood of ſuch priſoners as be taken of light ſuſpicion. 3 Ed. 1. c. 12.

Felons] This ſtatute extendeth not to treaſon, which is the higheſt offence; nor to petit larceny, which is of all felonies the loweſt: but if a man ſtand obſtinately mute upon an arraignment of treaſon or petit larceny, he ſhall have the like judgment as if he had confeſſed the indictment. 2 *Inſt.* 177. 2 *Haw.* 329.

This word *felons* extendeth as well to women, as to men. 2 *Inſt.* 177.

Notorious, and openly of evil fame] Therefore no perſon ſhall be put to this puniſhment, unleſs the matter be evident or proveable, which it is the duty of the judge to look unto, and to examine the evidence which proves the priſoner guilty of the fact, before he proceed to the judgment of *pain fort & dure.* 2 *Inſt.* 177. 2 *Haw.* 330.

And will not put themſelves in inqueſts] This is called ſtanding mute. Now a man may ſtand mute two manner of ways:

Firſt, when he ſtands mute *without ſpeaking of any thing*; and then the court ſhall *ex officio* inquire by the oath of any 12 perſons that happen to be preſent, whether he do ſo of malice, or by the act of god; and if it be found that it was by the act of god, then the judges of the court (who are always to be of counſel with the priſoner to give him law and juſtice) ought to inquire touching all thoſe points which he might poſſibly plead for himſelf, as whether a felony were done, whether he be the ſame perſon that is indicted for it, whether he did it, and whether he hath any matter to alledge for his diſcharge; and ſuch inquiry ſhall be made, not by an inqueſt of office, but by a jury returned by the ſheriff, in the ſame manner as if the defendant had actually pleaded; for ſince it is not his own fault that he did not ſo plead, there is no reaſon why his trial ſhould be in a more looſe and ſummary manner, or any way leſs regular or ſolemn, than if he had ſo pleaded. 2 *Inſt.* 178. 2 *Haw.* 327, 328. 2 *H. H.* 317.

But what if all this be found againſt the priſoner, what ſhall be done?——Whether judgment of death ſhall be given againſt him, though he never pleaded, ſeems yet undetermined. 2 *H. H.* 317.

But after a man hath confeſſed himſelf guilty, or pleaded and put himſelf upon his country, he ſhall not afterwards be demeaned as one that ſtands mute, in reſpect of his ſubſequent ſilence; but the jury ſhall be charged, and the trial ſhall proceed, and the like judgment ſhall be given as in common caſes. 2 *Haw.* 327.

Alſo if the perſon become mute, and not by the act of god, as by cutting out his own tongue, he ſhall forthwith be put to his penance. 2 *Inſt.* 178.

Another kind of mute is, when the priſoner can ſpeak, and perhaps pleadeth not guilty, or pleadeth a plea in law, and *will not conclude to the inqueſt* according to this act, that is, to be tried

by god and the country; then this act is sufficient warrant, if the cause be evident or probable, to put him to his penance: But if he demur in law, and it be adjudged against him, he shall have judgment to be hanged; and tho' by his demurrer he refuse to put himself upon the inquest according to the letter of this act, yet forasmuch as he is out of the reason of this act, for that he refuseth not the trial of the common law, the demurrer being allowed to him by law, and to be tried by the judges, he shall not be put to his penance, but have judgment to be hanged, and not have *pain fort & dure.* 2 Inst. 178.

At the king's suit] This act speaketh only of indictments at the suit of the king; but the judgment of *pain fort & dure* was at the common law, both in indictments and appeals. 2 *Inst.* 177.

Shall have strong and hard imprisonment] *Soient mises en la prison fort & dure:* The judgment in this case is, that the man or woman shall be remanded to the prison, and laid there in some low and dark room, where they shall lie naked on the bare earth without any litter, rushes, or other cloathing, and without any garment about them, but something to cover their privy parts, and that they shall lie upon their backs, their heads uncovered and their feet, and one arm shall be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner shall be done with their legs, and there shall be laid upon their bodies iron and stone, so much as they may bear and more, and the next day following they shall have 3 morsels of barley bread without any drink, and the second day they shall drink thrice of the water that is next to the house of the prison (except running water) without any bread, and this shall be their diet until they be dead. So as upon the matter they shall die three manner of ways, by weight, by famine, and by cold. And the reason of this terrible judgment is, because they *refuse to stand to the common law of the land.* 2 Inst. 178, 179.

Which punishment being so severe, Lord *Hale* advises, that it be not given too hastily, but that the prisoner be not only thrice admonished, but also have some convenient respite, as until the afternoon, to bethink himself, if the arraignment be in the morning; or till the next morning, if the arraignment be in the afternoon: and that the judgment it self be distinctly read to him, that he may know his danger before his final refusal, with due admonition not to destroy himself. 2 *H. H.* 320.

And it is said to be the practice of *Newgate* sessions, where a prisoner refuses to plead, to endeavour to compel him to do it, by tying his thumbs together with whip-cord, and drawing them together by the strength of two men, to give him a taste of the pain to be endured, if he will not comply. 2 *Haw.* 331.

And tho' judgment be given of *pain fort & dure*, yet if the offence laid in the indictment be within clergy, his clergy shall be allowed him; and tho' in strictness of law the prisoner ought to pray it, yet it is the duty of the judge to allow it, tho' not prayed, and that as well after judgment pronounced as before. 2 *H. H.* 320, 321.

And as to the caſe how far he is intitled to his clergy, it is enacted by the 3 *W. c.* 9. that if any perſon be indicted of any offence, for which by virtue of that or any former ſtatute he is excluded from the benefit of clergy, if he had been convicted by verdict or confeſſion; if he ſtand mute, or will not anſwer directly to the felony, or ſhall challenge peremptorily above 20 of the jury, he ſhall not be admitted to the benefit of clergy. *ſ.* 2.

In which expreſſion [by virtue of any *former* ſtatute] offences excluded from the benefit of clergy by ſubſequent ſtatutes ſeem not to be comprehended; and conſequently perſons ſtanding mute on an indictment upon any ſuch ſubſequent ſtatute, ſhall have their clergy, if it is not otherwiſe ſpecially provided by ſuch ſtatute. 2 *Hawv.* 332.

And as to the other conſequences of ſtanding mute, it is obſervable, that where a perſon ſtanding mute is adjudged to his penance, and thereby prevents that attainder which otherwiſe he might have incurred, he *forfeits his chattels* only, and not his *lands*; and for this reaſon ſome have endured this puniſhment. 2 *Hawv.* 331.

It doth not appear that the proſecutor of an indictment for felony, where the defendant ſtandeth mute, is intitled to the reſtitution of his goods, either by the common law, or by any ſtatute. 2 *Hawv.* 332.

But this is not to be underſtood of ſuch priſoners as ſhall be taken on light ſuſpicion] But if they obſtinately ſtand mute, it ſeemeth that they may be ſeverely fined and impriſoned for the contempt. 2 *Hawv.* 330.

Naval Stores. See Stores.
Navigation. See Rivers.
Needlework. See Buttons.
Nets. See Game.
News papers. See Stamps.
Night walkers. See Surety.
Noblemen. See Peers.
Non compos. See Lunatick.
Non conformists. See Diſſenters.

Northern borders.

Blackmail.

1. FORASMUCH as many persons dwelling in *Cumberland*, *Northumberland*, *Westmorland*, and *Duresme*, have been taken by force, and kept until ransomed; and whereas by reason of incursions, burnings, and robberies, several inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly called by the name of *Blackmail*, to divers men of name, friended and allied with divers in those parts, who are known to be great robbers and spoil-takers in the said counties, to the end thereby to be by them freed, protected, and kept in safety; by reason whereof many are impoverished, and rapine much increased: It is therefore enacted, that whosoever shall without good authority take or detain any such persons against their wills, to ransom them, or make a prey or spoil of their persons or goods, upon deadly feud, or otherwise; or shall be aiding therein; or whosoever shall take, receive, or carry any money, corn, cattle, or other consideration, commonly called Blackmail, for such protection; or shall burn any stack of corn: he shall, on conviction at the assizes or sessions, be guilty of felony without benefit of clergy. 43 *El. c.* 13. *s.* 1, 2.

And persons outlawed in any of the said counties for any such murder, robberies, burglaries, or other felonies, shall in two months be certified in writing by the clerk of the peace to all the sheriffs of all the said counties; and the said sheriffs shall proclaim them in *Carlisle*, *Penreth*, *Cockermouth*, *Appulby*, *Kendal*, *Newcastle*, *Morpeth*, *Alnewick*, *Hexam*, *Duresme*, *Darlington*, *Bishop Awckland*, *Bernard Castle*, and *Berwick*, and once a month in every their county courts, till they surrender; and the mayors shall proclaim them in every fair, and every six weeks in the market; and persons relieving, or conferring with them, shall, on the like conviction, be imprisoned for six months, and bound to the good behaviour for a year. *s.* 3, 4, 5, 6.

Englishman committing a felony in Scotland.

2. By the 7 *J. c.* 1. If an *Englishman* shall commit felony in *Scotland*, and then fly into *England*, the justices of assize or sessions may send the offender into *Scotland* to be tried.

Moss-troopers.

3. The justices of *Northumberland* and *Cumberland*, may make order in sessions, for charging the respective counties, for securing the same against the moss-troopers (that is, thieves and robbers, who after having committed offences in the borders, do escape thro' the wastes and mosses); so as *Northumberland* be not charged above 500 *l.* nor *Cumberland* above 200 *l.* a year. And they may appoint a commander, with 30 men in *Northumberland*, and 12 men in *Cumberland*, to search for, pursue, and apprehend offenders. 13 & 14 *C.* 2. *c.* 22.

And the persons so employed shall be chosen in sessions yearly, or every two years at the farthest. 29 & 30 *C.* 2. *c.* 2.

And the sessions shall take security of the persons by them employed for preservation of the borders, to answer the damages sustained

ſuſtained by their neglect or default, and to pay the ſame in four months after proof made thereof in ſeſſions by oath of one witneſs; ſo as the goods ſtolen be entred in one of the books to be kept for that purpoſe, in 48 hours after they be ſtolen or gone; and books ſhall be kept for that end in every market town in the ſaid counties, and in ſuch other places, and by ſuch perſons, as the ſeſſions ſhall appoint. 29 & 30 *C.* 2. *c.* 2.

And by the 18 *C.* 2. *c.* 3. Great and notorious thieves and ſpoil-takers in the ſaid counties of *Northumberland* and *Cumberland*, ſhall ſuffer death as felons without benefit of clergy; or may be tranſported by order of the judges of aſſize, during life.

Theſe three acts in this ſection, to wit, 13 & 14 *C.* 2. 18 *C.* 2. and 29 & 30 *C.* 2. are but temporary; and by the laſt continuance 24 *G.* 2. *c.* 57. are of force to *June* 24. 1757, *&c.*

4. Before the above recited acts, the peace of the northern borders was maintained by the lords wardens of the Marches, by virtue of certain regulations agreed upon from time to time by commiſſioners appointed by the two crowns reſpectively: for the knowledge whereof Biſhop *Nicholſon's Border laws* may be conſulted by the curious. Border ſervice.

Nuſance.

I. What it is.
II. How it may be removed.
III. How puniſhed.

I. What it is.

A Common nuſance ſeems to be, an offence againſt the publick, either by doing a thing which tends to the annoyance of all the king's ſubjects, or by neglecting to do a thing which the common good requires. 1 *Haw.* 197.

Annoyances to the prejudice of particular perſons, are not puniſhable by a publick proſecution as common nuſances, but are left to be redreſſed by the private actions of the parties aggrieved by them. 1 *Haw.* 197.

Where note a diverſity between a *private* and a *publick* nuſance: If it is a *private* nuſance, he ſhall have his action upon his caſe, and recover his damages; but if it is a *publick* nuſance, he ſhall not have an action upon his caſe, and this the law hath provided for avoiding of multiplicity of ſuits, for if any one might have an action, all men might have the like: but the law for this common nuſance hath provided an apt remedy, by preſentment or indictment at the ſuit of the king, in the behalf of all his ſubjects; unleſs any man hath a particular damage, as if he and his

horſe fall into a ditch made acroſs a highway, whereby he received hurt and loſs, there for this ſpecial damage which is not common to others, he ſhall have an action upon his caſe. 1 *Inſt.* 56.

And from hence it clearly follows, that no indictment for a nuſance can be good, which lays it to the damage of private perſons only: as where it accuſes a man of ſurcharging ſuch a common; or of incloſing ſuch a piece of ground, wherein the inhabitants of ſuch a town have a right of common, to the nuſance of all the inhabitants of ſuch a town; or of diſturbing a watercourſe running to ſuch a mill, to the damage of ſuch a perſon and his tenants, without ſaying *of all the liege ſubjects of the king.* 1 Haw. 197.

Yet it hath been ſaid, that an indictment of a common ſcold is good, altho' it conclude to the common nuſance of *divers*, inſtead of *all*, the king's ſubjects; perhaps for this reaſon (ſays Mr. *Hawkins*) becauſe a common ſcold cannot but be a common nuſance. 1 *Haw.* 198

And if the law be ſo in this caſe, why ſhould not an indictment ſetting forth a nuſance to a way, and expreſsly and unexceptionably ſhewing it to be a highway, be good, notwithſtanding it conclude to the nuſance of *divers*, without ſaying *all* the king's ſubjects? And perhaps the authorities which ſeem to contradict this opinion, might go upon this reaſon, that in the body of the indictment, it did not appear with ſufficient certainty, whether the way, wherein the nuſance was alledged, were a highway, or only a private way; and therefore that it ſhall be intended from the concluſion of the indictment, that it was a private way. 1 *Haw.* 198.

There is no doubt, but that common bawdy houſes are indictable as common nuſances; and it hath been ſaid, that all common ſtages for rope dancers, and alſo all common gaming houſes, are nuſances in the eye of the law, not only becauſe they are great temptations to idleneſs, but alſo becauſe they are apt to draw great numbers of diſorderly perſons. 1 *Haw.* 198.

Alſo it hath been holden, that a common playhouſe may be a nuſance, if it draw together ſuch a number of coaches or people, as prove generally inconvenient to the places adjacent. 1 *Haw.* 198.

Erecting a ſhed ſo near a man's houſe, that it ſtops up his lights is not a nuſance for which an action will lie, unleſs the houſe is an ancient houſe, and the lights ancient lights. 2 *Salk.* 459.

Alſo ſtopping a proſpect is not a nuſance. 3 *Salk.* 247.

A gate erected in a highway, where none had been before, is common nuſance. 1 *Haw.* 199.

It hath been holden, that it is no common nuſance to make candles in a town, becauſe the needfulneſs of them ſhall diſpenſe with the noiſomeneſs of the ſmell; but the reaſonableneſs of this opinion ſeems juſtly to be queſtionable, becauſe whatever neceſſity there may be that candles be made, it cannot be pretended to be neceſſary to make them in a town: And ſurely the trade of a brewer is as neceſſary as that of a chandler; and yet it ſeems to be

be agreed, that a brewhouſe erected in ſuch an inconvenient place, wherein the buſineſs cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuſance: And ſo in like caſe may a glaſs houſe, or a ſwine yard. 1 *Haw.* 199.

A perſon was indicted, for making great noiſes in the night with a ſpeaking trumpet, to the diſturbance of the neighbourhood; and it was held by the court to be a nuſance. *T.* 12 *G.* *K.* and *Smith.* *Str.* 704.

But it hath been reſolved, that neither an old, nor a new dove coat is a common nuſance; but perhaps if a tenant hath erected one without licence of the lord of the manor, the lord may have an action on his caſe againſt him. 1 *Haw.* 198.

II. How it may be removed.

It ſeemeth to be certain, that any one may pull down or otherwiſe deſtroy a common nuſance, as a new gate, or even a new houſe erected in a highway, or the like; for if one whoſe eſtate is or may be prejudiced by a *private* nuſance actually erected, as a houſe hanging over his ground, or ſtopping his lights, may juſtify the entring into another's ground, and pulling down and deſtroying ſuch a nuſance, whether it were erected before or ſince he came to the eſtate, it cannot but follow *a fortiori*, that any one may lawfully deſtroy a *common* nuſance: And as the law is now holden, it ſeems that in a plea, juſtifying the removal of the nuſance, a man need not ſhew that he did as little damage as might be. 1 *Haw.* 199.

But although he may remove the nuſance, yet he cannot remove the materials, or convert them to his own uſe. *Dalt.* *c.* 50.

III. How puniſhed.

It is ſaid, that a common ſcold is puniſhable by being put into the cucking ſtool. 1 *Haw.* 200.

Note; *cuck* or *guck* in the *Saxon* tongue (according to Lord *Coke*) ſignifieth to ſcold or brawl; taken from the bird *cuckow* or *guckhaw*: and *ing* in that language ſignifieth water; becauſe a ſcolding woman was for her puniſhment ſowſed in the water. 3 *Inſt.* 219. The common people in the northern parts of *England*, amongſt whom the greateſt remains of the ancient *Saxon* are to be found, pronounce it *ducking ſtool*; which perhaps may have ſprung from the *Belgick* or *Teutonick ducken*, to dive under water; from whence alſo probably we denominate our *duck* the water fowl: or rather, it is more agreeable to the analogy and progreſſion of languages, to aſſert, that the ſubſtantive *duck* is the original, and the verb made from thence; as much as to ſay, that to *duck* is to do as that fowl does.

And ſhe may be convicted, without ſetting forth the particulars in the indictment. 2 *Haw.* 227.

Nevertheleſs, the offence muſt be ſet forth with convenient certainty; and the indictment muſt conclude not only *againſt the peace*,

peace, but *to the common nuſance of divers of his majeſty's liege ſubjects*. As in the caſe of *K.* and *Margaret Cooper*, *H.* 19 *G.* 2. She was convicted on an indictment, for being *a common and turbulent brawler, and ſower of diſcord amongſt her quiet and honeſt neighbours, ſo that ſhe hath ſtirred, moved, and incited divers ſtrifes, controverſies, quarrels, and diſputes, amongſt his majeſty's liege people, againſt the peace*, &c. It was moved in arreſt of judgment, that the charge was too general, and did not amount to being either a barrator or common ſcold, which are the only inſtances in which a general charge will be ſufficient. It was likewiſe objected, that if the words did amount to a deſcription of a ſcold, yet it ſhould be laid to be to the common nuſance of her neighbours, for every degree of ſcolding is not indictable. And the court was of opinion, that the judgment ought to be arreſted on both exceptions; for none of the words here uſed are the technical words, and it muſt be laid to be to the common nuſance. *Str.* 1246.

There is no doubt, but that whoever is convicted of another nuſance, may be fined and impriſoned; and it is ſaid, that one convicted of a nuſance done to the king's highway, may be commanded by the judgment to remove the nuſance at his own coſts: and it ſeemeth to be reaſonable, that thoſe who are convicted of any other common nuſance, ſhould alſo have the like judgment. 1 *Haw.* 200. *Str.* 686.

And the defendant ſhall not be allowed to make any objections againſt the indictment, until he hath pleaded to it. *Dalt. c.* 66.

And the court never admits a perſon convicted of a nuſance, to a ſmall fine, until proof is made of the nuſance being removed. *Dalt. c.* 66.

A maſter is indictable for a nuſance done by his ſervant. L. *Raym.* 264.

All common nuſances are indictable not only at the ſeſſions, but alſo in the torn and leet. 2 *Haw.* 67.

An act of general pardon only diſcharges the fine, but not the abatement of the nuſance. 2 *Salk.* 458.

There are many offences by particular ſtatutes declared to be common nuſances, which are treated of under their reſpective titles.

Oaths.

I. Of oaths in general.
II. The common forms of oaths.
III. Quakers oaths.
IV. Oaths of Infidels.

I. Of oaths in general.

Oath.

1. OATH is a corruption of the *Saxon* word *eoth*. 3 *Inſt.* 165.

Corporal oath.

2. It is called a corporal oath, becauſe the perſon lays his hand upon ſome part of the ſcriptures when he takes it. 3 *Inſt.* 165.

Oath taken on the common prayer book.

3. If the oath be taken on the common prayer book, which hath the epiſtles and goſpels, it is good enough, and perjury upon the ſtatute may be aſſigned upon this oath. 2 *Keb.* 314.

So help me god.

4. The words, *So help me god*, in the common form of an oath, perhaps may have been firſt uſed in the very ancient manner of trial by battel in this kingdom, or at leaſt are delivered with a peculiar emphaſis in that ſolemnity; wherein the appellee lays his right hand on the book, and with his left hand takes the appellant by the right, and ſwears to this effect, *Hear this, thou who calleſt thy ſelf* John *by the name of baptiſm, that I who call my ſelf* Thomas *by the name of baptiſm, did not feloniouſly murder thy father* W. *by name*——*So help me god*——(and then he kiſſes the book, and ſays) *and this I will defend againſt thee by my body, as this court ſhall award.* And ſo the appellant is ſworn in like manner.

Power of adminiſtring an oath.

5. No ancient oath can be altered, or new oath impoſed, without an act of parliament; nor can any oath be adminiſtred by any, that have not allowance by the common law time out of mind, or by an act of parliament. 2 *Inſt.* 479. 3 *Inſt.* 165.

And this is the reaſon why generally there is a clauſe in the ſtatutes, giving power to the juſtices to this or the like effect [*which oath ſuch juſtice is hereby impowered to adminiſter*]; tho' it ſeems to be clear, that if an act impowers a juſtice, in a ſummary way to convict an offender by the oath of a witneſs, it doth (without any more) of neceſſity give him power to adminiſter the oath to that witneſs; and that it is ſufficiently implied in the words, and neceſſarily included in the power. For when the law grants any thing, that alſo is granted, without which the thing it ſelf cannot be. 12 *Co.* 130, 131.

Perjury.

6. Where an oath is adminiſtred by a perſon that hath lawful authority to tender the ſame, and it be afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor puniſhable by the common law. 3 *Inſt.* 166.

Therefore

Therefore if one call another a *perjured* man, he may have an action on the case, because it shall be intended to be contrary to his oath in a judicial proceeding; but for calling one a *forsworn* man, no action lies; because the forswearing may be extrajudicial, and consequently no perjury in law. 3 *Inst.* 166.

Of the oath of allegiance.

7. Every layman, above the age of 12 years, was anciently obliged to take the oath of allegiance at the tourn or leet, and it was a high contempt to refuse it. 1 *Inst.* 68.

But the clergy were not obliged to take the oath of allegiance till the reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *H. H.* 71, 72.

Lord *Hale*, speaking of the ancient oath of allegiance, which continued above 600 years, says, that therein the prudence of the common law is observable, that it was short and plain, not intangled with long and intricate clauses or declarations, but that the sense of it was obvious to the most common understanding, and yet withal comprehensive of the whole duty of a subject to his prince. 1 *H. H.* 63. And from this the present form of the oath of allegiance hath not much varied.

Of the oath of supremacy.

8. The oath of supremacy came in, upon abolishing the papal authority at the reformation. *Read. Oath.*

Of the oath of abjuration.

9. The oath of abjuration came in after the revolution; received some alterations in the first year of queen *Anne*; and again in the first year of king *George* the first; and so continues to this time.

Perhaps it might be wished, that it were made more applicable to Lord *Hale*'s rule, in being more short and plain; there being in it several hard words, which probably many who take it do not well understand; and there being an act of parliament therein referred to, which perhaps not one in fifty who take it have consulted.

Summoning persons to take the oaths.

10. Two justices may summon by writing under hand and seal, any person whom they shall suspect to be dangerous or disaffected to the government, to appear before them, at a certain day and time therein to be appointed, to take the oaths of allegiance, supremacy, and abjuration; and if such person neglects or refuses to appear, then on due proof made on oath of the summons having been served on such person, or left at his dwelling house, or usual place of abode, with one of the family there, they shall certify the same to the next sessions, there to be recorded by the clerk of the peace. And if such person shall neglect or refuse to appear and take the oaths at the said sessions (the name of such person being publickly read at the first meeting of the said sessions), then such person shall be esteemed and adjudged a popish recusant convict: and the same shall be thence certified, by the clerk of the peace, into the chancery or king's bench, to be there recorded. 1 *G. st.* 2. *c.* 13. *s.* 10, 11.

Whom they shall suspect] It seemeth that a bare suspicion is not sufficient, but there should be some good cause of suspicion, and that the cause of suspicion is traversable. *Read. Oath.*

Refuse

Refuſe—to take the oaths] A perſon cannot be ſaid to *refuſe* the oaths, unleſs they be read to him, or offered to be read. *Read. Oath.*

II. The common forms of oaths.

1. The oath of allegiance, by the 1 *G. ſt.* 2. *c.* 13. Oath of allegiance.

I A. B. *do ſincerely promiſe and ſwear, that I will be faithful, and bear true allegiance to his majeſty king* George: *So help me god.*

2. The oath of ſupremacy, by the 1 *G. ſt.* 2. *c.* 13. Oath of ſupremacy.

I A. B. *do ſwear, that I do from my heart abhor, deteſt, and abjure, as impious and heretical, that damnable doctrine and poſition, that princes excommunicated or deprived by the pope, or any authority of the ſee of* Rome, *may be depoſed or murdered by their ſubjects, or any other whatſoever. And I do declare, that no foreign prince, perſon, prelate, ſtate, or potentate, hath, or ought to have, any juriſdiction, power, ſuperiority, pre-eminence or authority, eccleſiaſtical or ſpiritual, within this realm: So help me god.*

3. The oath of abjuration, by the 1 *G. ſt.* 2. *c.* 13. Oath of abjuration.

I A. B. *do truly and ſincerely acknowledge, profeſs, teſtify, and declare in my conſcience, before god and the world, that our ſovereign lord king* George *is lawful and rightful king of this realm, and all other his majeſty's dominions thereunto belonging. And I do ſolemnly and ſincerely declare, that I do believe in my conſcience, that the perſon pretended to be prince of* Wales, *during the life of the late king* James, *and ſince his deceaſe, pretending to be, and taking upon himſelf, the ſtyle and title of king of* England, *by the name of* James *the third, or of* Scotland, *by the name of* James *the eighth, or the ſtyle and title of king of* Great Britain, *hath not any right or title whatſoever, to the crown of this realm, or any other the dominions thereto belonging: And I do renounce, refuſe, and abjure any allegiance or obedience to him. And I do ſwear, that I will bear faith and true allegiance to his majeſty king* George, *and him will defend, to the utmoſt of my power, againſt all traiterous conſpiracies and attempts whatſoever, which ſhall be made againſt his perſon, crown, or dignity. And I will do my utmoſt endeavour, to diſcloſe and make known to his majeſty, and his ſucceſſors, all treaſons and traiterous conſpiracies which I ſhall know to be againſt him, or any of them. And I do faithfully promiſe, to the utmoſt of my power, to ſupport, maintain and defend the ſucceſſion of the crown againſt him the ſaid* James, *and all other perſons whatſoever; which ſucceſſion, by an act, intitled,* An act for the further limitation of the crown, and better ſecuring the rights and liberties of the ſubject, *is and ſtands limited to the princeſs* Sophia, *Electoreſs and dutcheſs dowager of* Hanover, *and the heirs of her body being proteſtants. And all theſe things I do plainly and ſincerely acknowledge and ſwear, according to theſe expreſs words by me ſpoken, and according to the plain and common ſenſe and underſtanding of the ſame words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promiſe, heartily, willingly, and truly, upon the true faith of a chriſtian: So help me god.*

4. The

Declaration against tranſubſtantiation.

4. The declaration againſt tranſubſtantiation; by the 25 *C.* 2. *c.* 2. *ſ.* 9.

I A. B. *do declare, that I do believe, that there is not any tranſubſtantiation in the ſacrament of the lord's ſupper or in the elements of bread and wine, at or after the conſecration thereof by any perſon whatſoever.*

Declaration againſt popery.

5. The declaration againſt popery; by the 30 *C.* 2. *ſt.* 2. *c.* 1.

I A. B. *do ſolemnly and ſincerely, in the preſence of god, profeſs, teſtify, and declare, that I do believe, that in the ſacrament of the lord's ſupper there is not any tranſubſtantiation of the elements of bread and wine into the body and blood of* Chriſt, *at or after the conſecration thereof by any perſon whatſoever: And that the invocation, or adoration of the virgin* Mary, *or any other ſaint, and the ſacrifice of the maſs, as they are now uſed in the church of* Rome, *are ſuperſtitious and idolatrous: And I do ſolemnly in the preſence of god, profeſs, teſtify, and declare, That I do make this declaration, and every part thereof, in the plain and ordinary ſenſe of the words read unto me, as they are commonly underſtood by* Engliſh *proteſtants, without any evaſion, equivocation, or mental reſervation whatſoever, and without any diſpenſation already granted me for this purpoſe by the pope, or any other authority or perſon whatſoever,* or *without any hope of any ſuch diſpenſation from any perſon or authority whatſoever,* or *without thinking that I am, or can be acquitted before god or man, or abſolved of this declaration, or any part thereof, altho' the pope, or any other perſon or perſons, or power whatſoever, ſhall diſpenſe with or annul the ſame, or declare that it was null or void from the beginning.*

III. Quakers oaths.

Affirmation allowed.

1. In all caſes wherein by any act of parliament an oath ſhall be allowed or required, the ſolemn affirmation of quakers ſhall be allowed inſtead of ſuch oath; and that, altho' no expreſs proviſion be made for that purpoſe in ſuch act. 22 *G.* 2. *c.* 46.

Perjury incurred by falſe affirmation.

2. And if any perſon ſhall be lawfully convicted of wilful, falſe, and corrupt affirming or declaring any matter or thing, which if ſworn in the uſual form would have amounted to wilful and corrupt perjury, he ſhall ſuffer as in caſes of perjury. 8 *G.* *c.* 6. *ſ.* 2.

Affirmation not allowed in criminal matters.

3. But no quaker ſhall by virtue hereof be qualified or permitted to give evidence in any criminal cauſe, or ſerve on any juries, or bear any office or place of profit in the government. 7 & 8 *W.* *c.* 34. *ſ.* 6.

In any criminal cauſe] By which words it ſeemeth, that a quaker ſhall not have ſureties of the peace or good behaviour granted to him, or have a warrant to ſearch for ſtolen goods, or ſue the hundred for damages in caſe of robbery, and the like, upon his bare affirmation; but that in all ſuch caſes, an oath is firſt neceſſary to be made.

Thus, *T.* 4 *G.* 2. *K.* and *Wych.* It was denied to read a quaker's affirmation, on a motion for an *information* for a miſdemeanor. *Str.* 872.

T. 7 *G.*

T. 7 *G. Robins* and *Sayward.* By the court, We cannot ground an *attachment*, for non performance of an award, on the affirmation of a quaker; for though it be in a ſuit between party and party, yet it is a criminal proſecution within the proviſo of the ſtatute. *Str.* 441.

H. 3 *G.* 2. *Caſtell*, widow, againſt *Bambridge* and *Corbet.* In an *appeal* of murder, a quaker was called for a witneſs, and it was inſiſted that this is a civil ſuit between party and party, and not between the king and the party, and therefore his affirmation ought to be taken. But *Raymond* Ch. J. ſaid, it was to this purpoſe a criminal proceeding, and therefore he could not be a witneſs. *Str.* 856.

4. The quakers ſolemn affirmation, inſtead of an oath, as finally ſettled by the 8 *G. c.* 6. is as follows; *viz.* General form of affirmation.

"*I* A. B. *do ſolemnly, ſincerely, and truly declare and affirm.*"

5. Inſtead of the oaths of allegiance and ſupremacy, quakers ſhall be allowed to make the following declaration of fidelity; by the 8 *G. c.* 6. Declaration of fidelity.

I A. B. *do ſolemnly and ſincerely promiſe and declare, that I will be true and faithful to king* George; *and do ſolemnly, ſincerely, and truly profeſs, teſtify, and declare, that I do from my heart abhor, deteſt, and renounce, as impious and heretical, that wicked doctrine and poſition, that princes excommunicated or deprived by the pope, or any authority of the ſee of* Rome, *may be depoſed or murdered by their ſubjects, or any other whatſoever. And I do declare, that no foreign prince, perſon, prelate, ſtate, or potentate, hath or ought to have, any power, juriſdiction, ſuperiority, preheminence, or authority, eccleſiaſtical or ſpiritual, within this realm.*

6. And by the ſame act, they ſhall be allowed to take the effect of the abjuration oath, in theſe words; Abjuration.

I A. B. *do ſolemnly, ſincerely, and truly acknowledge, profeſs, teſtify, and declare, that king* George *is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do ſolemnly and ſincerely declare, that I do believe the perſon pretended to be the prince of* Wales, *during the life of the late king* James, *and ſince his deceaſe, pretending to be, and taking upon himſelf the ſtile and title of king of* England, *by the name of* James *the third, or of* Scotland, *by the name of* James *the eighth, or the ſtile and title of king of* Great Britain, *hath not any right or title whatſoever to the crown of this realm, nor any other the dominions thereunto belonging; and I do renounce and refuſe any allegiance or obedience to him. And I do ſolemnly promiſe, that I will be true and faithful, and bear true allegiance to king* George, *and to him will be faithful againſt all traiterous conſpiracies and attempts whatſoever, which ſhall be made againſt his perſon, crown, or dignity. And I will do my beſt endeavour to diſcloſe and make known to king* George, *and his ſucceſſors, all treaſons and traiterous conſpiracies, which I ſhall know to be againſt him, or any of them. And I will be true and faithful to the ſucceſſion of the crown againſt him the ſaid* James, *and all other perſons whatſoever, as the ſame is and ſtands ſettled by an act, intituled,* An act declaring the rights and liberties of the ſubject, and ſettling the ſucceſſion of the crown, *to the late queen*

queen Anne, *and the heirs of her body, being proteſtants; and as the ſame, by one other act, intituled,* An act for the further limitation of the crown, and better ſecuring the rights and liberties of the ſubject, *is and ſtands ſettled and intailed, after the deceaſe of the ſaid late queen; and for default of iſſue of the ſaid late queen, to the late princeſs* Sophia, *Electoreſs and dutcheſs dowager of* Hanover, *and the heirs of her body, being proteſtants. And all theſe things I do plainly and ſincerely acknowledge, promiſe, and declare, according to theſe expreſs words by me ſpoken, and according to the plain and common ſenſe and underſtanding of the ſame words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever. And I do make this recognition, acknowledgment, renunciation, and promiſe, heartily, willingly, and truly.*

Profeſſion of belief.

7. The quakers profeſſion of their belief; by the 1 *W. c.* 18. *I* A. B. *profeſs faith in god the father, and in Jeſus Chriſt his eternal ſon, the true god, and in the holy ſpirit, one god bleſſed for evermore; and do acknowledge the holy ſcriptures of the old and new teſtament to be given by divine inſpiration.*

IV. Oaths of Infidels.

Jews.

1. A Jew is to be ſworn on the old teſtament, and perjury upon the ſtatute may be aſſigned upon this oath. 2 *Keb.* 314.

H. 2 *G.* 2. *Gomez Serra* and *Munez.* Upon error in debt upon a bond, the bail being both Jews, were ſuffered to put on their hats while they took the oath. *Str.* 821.

When Jews take the oath of abjuration, the words [*on the true faith of a chriſtian*] ſhall be omitted. 10 *G. c.* 4. *ſ.* 13.

Mahometans.

2. At the council, *Dec.* 9. 1738. Preſent the two chief juſtices. On a complaint of *Jacob Fachina* againſt general *Sabine,* as governor of *Gibraltar*; *Alderaman Ben Monſo,* a Moor, was produced as a witneſs, and ſworn upon the *Koran. Str.* 1104.

H. 18 *G.* 2. In the chancery. *Omichund* againſt *Barker.* A Mahometan was ſworn upon the *Koran. Str.* 1104.

Concerning the taking of oaths for qualifying for offices, ſee title Office.

And concerning the offences of profane curſing and ſwearing, ſee title Swearing.

Office.

I. Concerning the qualification for offices in corporations.

II. Concerning the qualification for offices in general.

I. Qualification for offices in corporations.

1. NO perſon ſhall be placed, elected, or choſen, to any office or place of mayor, alderman, recorder, bailiff, town clerk, common council man, or other office of magiſtracy, place, or truſt, or other employment, relating to the government of cities, corporations, boroughs, cinque ports, and other port towns, who ſhall not have received the ſacrament according to the rites of the church of *England*, within one year next before ſuch election: and every perſon ſo placed or elected, ſhall take the oaths (1 *G. c.* 13.) at the ſame time that the oath of office is taken; which ſhall be adminiſtred by thoſe, who by charter or uſage adminiſter the oath of office; and in default of ſuch, by two juſtices of the corporation, if there be any ſuch; or otherwiſe by two juſtices of the county. And in default thereof, every ſuch election and placing ſhall be void. 13 *C.* 2. *ſt.* 2. *c.* 1. 5 *G. c.* 6. *ſ.* 1, 2. To receive the ſacrament, and take the oaths.

And it hath been adjudged, to be no excuſe, that the oaths were not tendred. 1 *Haw.* 10.

Yet notwithſtanding that the words of this act of the 13 *C.* 2. (and alſo of the 25 *C.* 2. hereafter following) are ſo very ſtrong, as to make the officer's election void to all intents and purpoſes, yet it hath been ſtrongly holden, that the acts of a perſon under ſuch a diſability, being inſtated in ſuch an office, and executing the ſame without any objection to his authority, may be valid as to ſtrangers; for otherwiſe not only thoſe who no way infringe this law, but even thoſe whoſe benefit is intended to be advanced by it, might be ſufferers for another's fault, to which they are no way privy; and one chaſm in a corporation, happening thro' the default of one head officer, would perpetually vacate the acts of all others, whoſe authority, in reſpect of their admiſſion into their offices, or otherwiſe, may depend on his. 1 *Haw.* 10.

2. Which ſaid juſtices abovementioned ſhall cauſe memorandums to be made of ſuch oaths taken before them, and delivered once a year to the town clerk, or other regiſter or clerk, who ſhall enter the ſame in their books. 13 *C.* 2. *ſt.* 2. *c.* 1. Entring the ſame.

3. But no ſuch office ſhall be void on account of not having received the ſacrament, unleſs the perſon ſhall be removed in ſix months, or unleſs proſecution ſhall be commenced in ſix months, and carried on without wilful delay. 5 *G. c.* 6. *ſ.* 3. Limitation of actions.

4. And by the 27 *G.* 2. *c.* 13. Perſons who have omitted ſo to qualify, ſhall be indemnified, if they qualify on or before *Nov.* 28. 1754. Clauſe of indemnification.

And by the 28 *G.* 2. *c.* 3. Perſons who have omitted to take the *oath of office*, or whoſe admiſſions to ſuch office have not been duly ſtamped, ſhall be indemnified, if they ſhall take the ſaid oath, or provide admiſſions duly ſtamped, reſpectively, on or before *Sep.* 29. 1755.

And probably there may be ſome clauſe of indemnification in ſome future act, as there hath been from time to time heretofore.

II. Qualification for offices in general.

Taking the oaths.

1. Every perſon who ſhall be admitted into any office civil or military; or ſhall receive any pay by reaſon of any patent or grant from the king; or ſhall have any command or place of truſt in *England*, or in the navy; or ſhall have any ſervice or employment in the king's houſhold; all eccleſiaſtical perſons, heads and members of colleges, being of the foundation, or having any exhibition, of 18 years of age; and all perſons teaching pupils; ſchoolmaſters and uſhers; preachers and teachers of ſeparate congregations; high conſtables; and practiſers of the law,——ſhall (within ſix kalendar months after ſuch admiſſion, 9 *G.* 2. *c.* 26. *ſ.* 3) take and ſubſcribe the oaths of allegiance, ſupremacy, and abjuration, in one of the courts at *Weſtminſter*, or at the quarter ſeſſions; 1 *G. ſt.* 2. *c.* 13. *ſ.* 2. between the hours of 9 and 12 in the forenoon, and no other; and during the time of taking thereof, all proceedings in the ſaid courts ſhall ceaſe. 25 *C.* 2. *c.* 2. *ſ.* 2.

But this ſhall not extend to the office of tithingman, headborough, overſeer of the poor, churchwarden, ſurveyor of the highways, or any like inferior civil office, or to any office of foreſter, or keeper of any park, chaſe, warren, or game; or bailiff of any manor or lands, nor to any like private offices. 1 *G. ſt.* 2. *c.* 13. *ſ.* 20.

Receiving the ſacrament.

2. Alſo every ſuch perſon ſo to be admitted, ſhall receive the ſacrament according to the uſage of the church of *England* (within ſix kalendar months after his admittance. 9 *G.* 2. *c.* 26. *ſ.* 3.) in ſome publick church on the lord's day, immediately after divine ſervice and ſermon: And in the court where he takes the oaths, he ſhall firſt deliver a certificate of ſuch his receiving the ſaid ſacrament, under the hands of the miniſter and churchwarden, and ſhall then make proof of the truth thereof by two witneſſes on oath. All which ſhall be inquired of, and put upon record in the reſpective courts. 25 *C.* 2. *c.* 2. *ſ.* 2, 3.

Declaration againſt tranſubſtantiation.

3. They ſhall alſo, when they take the oaths, make and ſubſcribe the declaration againſt tranſubſtantiation. 25 *C.* 2. *c.* 2. *ſ.* 9.

Enrolling and fee.

4. Then the court ſhall enroll ſuch perſons names, with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpoſe only; which ſhall be hung up in ſome publick place of ſuch court during the whole time of its ſitting, to be ſeen without fee. 25 *C.* 2. *c.* 2. *ſ.* 6.

And the clerk of the peace ſhall have no more than 2 *s.* for the entry. 1 *G. ſt.* 2. *c.* 13. *ſ.* 9.

But

But no seaman or soldier, under the degree of a commission or warrant officer, shall pay any fee for taking the oaths. 1 *G. st.* 2. *c.* 13. *s.* 31.

Penalty of executing the office unqualified.

5. Every person, making default herein, shall be incapable to hold his office: and if he shall execute his office, after the said times are expired, he shall, upon conviction, be disabled to sue in any action, or to be guardian, or executor, or administrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and shall forfeit 500 *l.* to him who shall sue for the same. 25 *C.* 2. *c.* 2. *s.* 4, 5. 1 *G. st.* 2. *c.* 13. *s.* 8.

Exception of persons beyond sea.

6. But persons beyond the seas, shall not be disabled, if they shall qualify within six months after their return. 9 *G.* 2. *c.* 26. *s.* 4.

Feme covert: Infant: Non compos.

7. Also no married woman, or person under 18 years of age, or *non compos mentis*, shall forfeit their office (other than such married woman during the life of her husband only) if they take the oaths, and do the other things required, within four months respectively, after the death of the husband, coming to the age of 18 years, and becoming of sound mind. 25 *C.* 2. *c.* 2. *s.* 13.

General clause of indemnification.

8. Likewise, by the 28 *G.* 2. *c.* 24. Persons having omitted to qualify themselves in due time, shall be indemnified (if their place is not filled up) provided they qualify on or before *Nov.* 28. 1755. And there is commonly an indemnifying clause to the same purpose, in some act, every two or three years.

In like manner, by the 20 *G.* 2. *c.* 48. Persons who had omitted to subscribe the declaration against popery, of the 30 *C.* 2. were indemnified, if they subscribed on or before *Dec.* 1. 1747.

Persons disqualified may take a new grant.

9. Also, any person forfeiting his office, may take a new grant thereof, on his taking the oaths, and conforming; provided it be not filled up before. 1 *G. st.* 2. *c.* 13. *s.* 14.

Persons disqualified in the universities.

10. In the universities, where persons shall not take the oaths, or shall not produce a certificate thereof, to be registred in their proper college, and others be not elected in their places within 12 months, the king shall appoint and nominate. 1 *G. st.* 2. *c.* 13. *s.* 12, 13.

Offices of inheritance may be executed by deputy.

11. Persons refusing the oaths, having any office of inheritance, may appoint a deputy, so as such deputy be approved by the king under his privy signet. 1 *G. st.* 2. *c.* 13. *s.* 18.

Note; The forms of the aboveſaid oaths and declarations, are inſerted in title Oaths.

Orchards. See Wood.

Overſeers of the poor. See Poor.

Outlawry. See Pleas.

Pamphlets. See Stamps.
Paper. See Excise.
Papists. See Popery.
Parchment. See Stamps.

Pardon.

Pardon, what.

1. A Pardon is a work of mercy, whereby the king, either before the attainder, sentence, or conviction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt, or duty, temporal or ecclesiastical. 3 *Inst.* 233.

General pardon.

2. Pardons are either *general* or *special: General*, are by act of parliament; of which, if they are without exceptions, the court must take notice *ex officio*; but if there are exceptions therein, the party must aver that he is none of the persons excepted. 3 *Inst.* 233. *Hale's Pl* 252.

By the act of 20 *G.* 2. *c.* 52. for the king's general pardon; All persons are pardoned and discharged from all treasons, misprisions of treasons, felonies, treasonable and seditious words and libels, leasing making, misprisions of felony, offences whereby any person may be charged with the penalty of *præmunire*, riots, routs, offences, contempts, trespasses, entries, wrongs, deceits, misdemeanors, forfeitures, penalties, sums of money, pains of death, pains corporal, and pains pecuniary, and generally from all other things, causes, quarrels, suits, judgments, and executions, not by this act excepted, which can by the king be pardoned, and which were done or incurred before *June* 15. 1747.—— Excepted, persons in the service of the pretender, or of *France* or *Spain*; forging the king's seal; coining; violating the privileges of ambassadors; murders; petty treasons; poisonings; burning of houses, corn, hay, straw, wood; shooting at any person; sending threatning letters; piracy; destroying ships; offences in the navy or army; burglary; sacrilege; robbery; sodomy; buggery; rape; perjury; subornation; forgery; felony in cases of bankruptcy; destroying banks of rivers and sea banks; firing coal pits; offences against the excise, customs, land tax, post office, stamp duties, duty on houses and windows, wool, importing or exporting goods; offences concerning highways or bridges; imbezilling goods, and warlike stores of the crown; titles of *quare impedit*; incest; simony; dilapidations; first fruits; tenths; money due to the king from publick officers on account; persons transported; offences by papists; contempts in causes for non-performance of awards, or non payment of costs; contempts in ecclesiastical courts, in causes commenced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and excepted, several persons by name.

And the like, for the moſt part, hath been enacted by former ſtatutes of general pardon.

3. *Special* pardons, are either *of courſe*, as to perſons convicted of manſlaughter, or *ſe defendendo*, and by divers ſtatutes to thoſe who ſhall diſcover their accomplices in ſeveral felonies; — or, *of grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they muſt be pleaded. 3 *Inſt.* 233. Special pardon.

4. By the 27 *Ed.* 3. *c.* 2. In every charter of the pardon of felony, the ſuggeſtion, and the name of him that maketh the ſuggeſtion, ſhall be comprized; and if it be found untrue, the charter ſhall be diſallowed. Pardon to contain the ſuggeſtion.

5. And by the 13 *R.* 2. *ſt.* 2. *c.* 1. No charter of pardon ſhall be allowed for murder, treaſon, or rape, unleſs the offence be ſpecified therein. Pardon to ſpecify the offence.

Lord *Coke* ſays, the intention of this act was not, that the king ſhould grant a pardon of murder by expreſs name in the charter, but becauſe the whole parliament conceived that he would never pardon murder by ſpecial name. And he ſays, he hath never ſeen any pardon of murder by any king of *England*, by expreſs name. 2 *Inſt.* 233, 236.

6. The king cannot pardon an offence before it is committed; but ſuch pardon is void. 2 *Haw.* 389. The king cannot pardon an offence before it is committed.

7. As the releaſe of the party will not bar an indictment at the ſuit of the king; ſo neither will a pardon by the king be any bar to an appeal at the ſuit of the party. 2 *Haw.* 392. Cannot pardon an appeal.

8. And in ſome caſes even where the king is ſole party, ſome things there are which he cannot pardon; as for example, for all common nuſances, as for not repairing of bridges or highways, the ſuit (for avoiding multiplicity of ſuits) is given to the king only, for redreſs and reformation thereof; but the king cannot pardon or diſcharge either the nuſance, or the ſuit for the ſame; becauſe ſuch pardon would take away the only means of compelling a redreſs of it. But it hath been holden by ſome, that a pardon of ſuch offence will ſave the party from any fine, for the time precedent to the pardon. 3 *Inſt.* 237. 2 *Haw.* 391. Cannot pardon a nuſance.

9. Thus alſo, if one be bound by recognizance to the king, to keep the peace againſt another by name, and generally all other lieges of the king; in this caſe, before the peace be broken, the king cannot pardon or releaſe the recognizance, altho' it be made only to him, becauſe it is for the benefit and ſafety of his ſubjects. 3 *Inſt.* 238. Cannot diſcharge a recognizance.

10. Likewiſe, after an action popular is brought, *as well for the king as for the informer*, according to any ſtatute, the king can but diſcharge his own part, and cannot diſcharge the informer's part; becauſe by bringing of the action, the informer hath an intereſt therein: but before the action brought, the king may diſcharge the whole (unleſs it be provided to the contrary by the act) becauſe the informer cannot bring an action or information originally for his part only, but muſt purſue the ſtatute. And if the action be given to the *party grieved*, the king cannot diſcharge the ſame. 3 *Inſt.* 238. Cannot releaſe an information qui tam.

May discharge a suit in the spiritual court.

11. It seems to have been always agreed, that the king's pardon will discharge any suit in the spiritual court *ex officio*: Also it seems to be settled at this day, that it will discharge any suit in such court at the instance of the party, for the reformation of manners, or welfare of the soul, as for defamation, or laying violent hands on a clerk, and such like; for such suits are in truth the suits of the king, tho' prosecuted by the party. Also, it seems to be agreed, that if the time to which such pardon hath relation, be prior to the award of costs to the party, it shall discharge them: And it seems to be the general tenor of the books, that tho' it be subsequent to the award of the costs, yet if it be prior to the taxation of them, it shall discharge them; because nothing appears in certain to be due for costs before they are taxed. 2 *Haw.* 394.

But it seems agreed, that a pardon shall not discharge a suit in the spiritual court, any more than in a temporal, for a matter of interest or property in the plaintiff; as for tithes, legacies, matrimonial contracts, and such like. 2 *Haw.* 394.

Doth not by releasing a man release his partner.

12. If the king release to a man all debts, this shall not discharge his partner; but otherwise it is in case of a subject, for in that case the release to one dischargeth both. 3 *Inst.* 239.

Person pardoned may be bound to the good behaviour.

13. When a pardon is pleaded by any one for felony, the justices may at their discretion remand him to prison till he enter into recognizance, with two sureties, for his good behaviour, for any time not exceeding 7 years. 5 *W. c.* 13.

Pardon doth not restore lands or goods forfeited.

14. It seems to be a settled rule, that no pardon by the king, without express words of restitution, shall devest, either from the king or subject, an interest either in lands or goods, vested in them, by an attainder or conviction precedent. Yet it seems agreed, that a pardon prior to a conviction, shall prevent any forfeiture either of lands or goods. 2 *Haw.* 396.

Doth not restore the corruption of blood.

15. A pardon after the attainder, doth not restore the corruption of blood; for this cannot be restored but by act of parliament. 3 *Inst.* 233.

But as to issue born after the pardon, it hath the effect of a restitution of blood. 1 *H. H.* 358.

Doth restore the credit.

16. It seems to be settled at this day, that the pardon of a treason or felony, even after a conviction or attainder, doth so far clear the party from the infamy and all other consequences of his crime, that he may not only have an action for a scandal, in calling him traytor or felon, after the time of the pardon, but may also be a good witness, notwithstanding the attainder or conviction; because the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 *Haw.* 395.

But it seems to be the better opinion, that the pardon of a conviction of *perjury* doth not so restore the party to his credit, as to make him a good witness; because it would be an injury to the people in general, to make them subject to such a person's testimony. 1 *Ventr.* 349.

Parliament.

1. BY the 2 *G.* 2. *c.* 24. which act is required to be read at every *Easter* sessions, the returning officer of a member of the house of commons, shall after reading the writ, and before the election, take the oath against bribery, to be administred by one justice (or in his absence by three of the electors) and entred amongst the records of the sessions. Election.

And by the 9 *An.* *c.* 5. The oath of the qualification of a candidate shall be administred by two justices, who shall certify the same in three months into the chancery or king's bench, on pain of 100 *l.* And thereupon no fee shall be paid, but 1 *s.* for the oath, 2 *s.* for the certificate, and 2 *s.* for the filing.

And by the 10 *An.* *c.* 23. The sheriff in 20 days after the election shall deliver the poll books upon oath to the clerk of the peace, to be kept among the records of the sessions; which oath shall be administred by the two next justices (1 Q.)

2. A member of parliament shall have the privilege of parliament, not only for himself and his servants, to be freed from arrests, *subpœna*, citations, and the like; but also for his horses and goods to be free from distresses: but for treason, felony, and breach of the peace, there can be no privilege. 4 *Inst.* 24, 25. Privilege.

And by the 12 & 13 *W.* *c.* 3. and 11 *G.* 2. *c.* 24. Actions may be commenced and proceeded on, against peers or members of parliament, immediately after any dissolution, or prorogation for above 14 days, until they meet again:—Allowing nevertheless a reasonable time for their return from parliament; for their privilege existeth, not only during the time of their sitting, but for a reasonable time both before and after, for their going and returning. *Str.* 985. Col. *Pitt*'s case.

But it is said to have been declared by a resolution of the house of commons, *Mar.* 23. 1696. that no member of that house hath any privilege against payment of any aids, supplies, or tax granted to his majesty, or any parish duties. *Shaw's P. L.* at the end.

Partition.

BY the 8 & 9 *W.* *c.* 31. intituled, An act for the easier obtaining partitions of lands in coparceny, joint tenancy, and tenancy in common, it is enacted, that if the high sheriff cannot conveniently be present at the execution of any judgment in partition, in such case the under sheriff in presence of two justices may proceed to execution of the writ of partition.

Partridge. See Game.

Peace. See Surety.

Pedlars. See Hawkers.

Peers.

Not conservators of the peace.

1. DUKES, earls, and barons are not conservators of the peace at common law; and have no more power as such, than mere private persons. 2 *Haw.* 32.

Sureties of the peace against them.

2. The safest way of proceeding against a peer, for sureties of the peace or good behaviour, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127.

Trial of peers.

3. A nobleman must be tried by his peers: but this is to be understood only at the suit of the king, upon an indictment of high treason, petit treason, felony, or misprision thereof; but in case of a *præmunire*, riot, or the like, and generally for all other crimes out of parliament (unless otherwise specially provided for by statute, as it is in many instances), tho' it be at the suit of the king, he shall not be tried by his peers, but by the freeholders of the county. 3 *Inst.* 30. 2 *Haw.* 424.

Whether they may be outlawed.

4. Process of outlawry lies against a peer, if he be indicted, and appears not, and cannot be taken; otherwise he might take advantage of his own contumacy. 3 *Inst.* 31.

Whether they shall be burnt in the hand.

5. Peers shall have the benefit of clergy for the first offence of felony, without burning in the hand. 1 *Ed.* 6. *c.* 12. *f.* 14.

Evidence.

6. A peer produced as a witness, ought to be sworn. 3 *Keb.* 631.

Perry. See Excise.

Perjury and subornation.

I. Of perjury and subornation by the common law.

II. Of perjury and subornation by the statute of the 5 El.

III. Of matters common to them both.

I. Of perjury and subornation by the common law.

Perjury at the common law.

1. PERJURY by the common law, seemeth to be *a wilful false oath, by one who being lawfully required to depose the truth in any judicial proceeding, swears absolutely, in a matter material to the point in question, whether he be believed or not.* 1 Haw. 172. 3 Inst. 164.

Wilful] The false oath alledged against him, should be proved to be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprize, or inadvertency, or a mistake

miſtake of the true ſtate of the queſtion, it cannot but be hard to make it amount to voluntary and corrupt perjury. 1 *Haw.* 172.

Falſe] It is ſaid not to be material, whether the fact which is ſworn, be in it ſelf true or falſe; for however the thing ſworn may happen to prove agreeable to the truth, yet if it were not known to be ſo by him who ſwears to it, his offence is altogether as great as if it had been falſe, inaſmuch as he wilfully ſwears that he knows a thing to be true, which at the ſame time he knows nothing of, and impudently endeavours to induce thoſe before whom he ſwears, to proceed upon the credit of a depoſition, which any ſtranger might make as well as he. 1 *Haw.* 175.

Being lawfully required] It ſeemeth clear, that no oath whatſoever, taken before perſons acting merely in a private capacity; or before thoſe who take upon them to adminiſter oaths of a publick nature, without legal authority; or before thoſe who are legally authorized to adminiſter ſome kinds of oaths, but not thoſe which happen to be taken before them; or even before thoſe who take upon them to adminiſter juſtice by virtue of an authority ſeemingly colourable, but in truth unwarranted and merely void, —— can amount to perjuries, but are altogether idle and of no force. 1 *Haw.* 174.

In any judicial proceeding] For tho' an oath be given by him that hath lawful authority, and the ſame is broken, yet if it be not in a judicial proceeding, it is not perjury; becauſe ſuch oaths are general and extrajudicial: but it ſerves for aggravation of the offence. Such are, general oaths given to officers or miniſters of juſtice, the oath of fealty and allegiance, and ſuch like. Thus if an officer commit extortion, it is againſt his general oath, but yet not perjury, becauſe not in a judicial proceeding; but when he is charged with extortion, the breach of his oath may ſerve for aggravation. 3 *Inſt.* 166.

If a perſon calleth another *perjured* man, he may have his action upon his caſe, becauſe it muſt be intended contrary to his oath in a judicial proceeding; but for calling him a *forſworn* man, no action doth lie, becauſe the forſwearing may be extrajudicial. 3 *Inſt.* 166.

Swears abſolutely] For the depoſition muſt be direct and abſolute; and not, as he thinketh, or remembreth, or believeth, or the like. 3 *Inſt.* 166.

In a matter material to the point in queſtion] For if it be not material, then tho' it be falſe, yet it is no perjury, becauſe it concerneth not the point in iſſue, and therefore in effect it is extrajudicial. 3 *Inſt.* 167.

But it is not neceſſary that it appear *to what degree*, the point in which a man is perjured, was material to the iſſue; for if it is but circumſtantially material, it will be perjury. L. *Raym.* 258.

Much leſs is it neceſſary that the evidence be ſufficient for the plaintiff to recover upon; for in the nature of the thing, an evi-

dence

dence may be very material, and yet it may not be full enough to prove directly the point in queſtion. L. *Raym.* 889.

Whether he be believed or not] It hath been holden, not to be material upon an indictment of perjury at common law, whether the falſe oath were at all credited, or whether the party in whoſe prejudice it was intended, were in the event any way aggrieved by it or not; inſomuch as this is not a proſecution grounded on the damage of the party, but on the abuſe of publick juſtice. 1 *Haw.* 177.

Subornation at common law.

2. Subornation of perjury, by the common law, ſeems to be *an offence, in procuring a man to take a falſe oath, amounting to perjury, who actually taketh ſuch oath.* 1 Haw. 177.

But it ſeemeth clear, that if the perſon incited to take ſuch an oath, do not actually take it, the perſon by whom he was ſo incited is not guilty of ſubornation of perjury; yet it is certain, that he is liable to be puniſhed, not only by fine, but alſo by infamous corporal puniſhment. *id.*

Puniſhment of perjury and ſubornation by the common law.

3. The puniſhment of perjury, and ſubornation of perjury by the common law, is reſtrained by the ſtatute of the 5 *El.* hereafter following; that it ſhall not be leſs, than is inflicted by that ſtatute.

Power of juſtices of the peace therein.

4. Mr. *Hawkins* ſays, it hath been of late ſettled, that juſtices of the peace have no juriſdiction over perjury at the common law; the principal reaſon of which reſolution, he ſays, as he apprehended, was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was, for the preſervation of the peace againſt perſonal wrongs and open violence, and the word *treſpaſs* (in the commiſſion) in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only, or at the moſt to extend to ſuch other offences only, as have a direct and immediate tendency to cauſe ſuch breaches of the peace; as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40.

And in the caſe of *K.* and *Bainton*, *E.* 11 *G.* 2. An indictment at the quarter ſeſſions for perjury at the common law, was quaſhed for want of juriſdiction; and was ſaid to have been done ſo before, about three years ago, in the caſe of *K.* and *Wiſtineſs*. *Str.* 1088.

Perjury and ſubornation on the 5 El. c. 9.

II. Of perjury and ſubornation by the ſtatute of the 5 El.

As to ſubornation of perjury, in the firſt place, *Every perſon who ſhall unlawfully and corruptly procure any witneſs to commit any wilful and corrupt perjury; in any matter or cauſe depending in ſuit and variance, by any writ, action, bill, complaint, or information, touching any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages; in chancery, or in any court of record, leet, ancient demeſne court, hundred court, court baron, or court of chancery; or ſhall unlawfully and corruptly procure or ſuborn any witneſs which ſhall be ſworn to teſtify* in perpetuam rei memoriam,

——*ſhall*

——— *ſhall forfeit* 40 l. *half to the king, and half to the party grieved who ſhall ſue for the ſame. And if he has not lands or goods worth* 40 l. *he ſhall be impriſoned half a year, and ſtand on the pillory an hour in open market. And he ſhall be diſabled to be a witneſs in any court of record.*

And as to perjury, *If any perſon, either by ſubornation or otherwiſe, ſhall wilfully and corruptly commit any wilful perjury, by his depoſition in any the courts before mentioned, or being examined* in perpetuam rei memoriam; *he ſhall forfeit* 20 l. *in like manner, and be impriſoned* 6 *months; and if he has not goods worth* 20 l. *he ſhall be ſet on the pillory in the market place by the ſheriff, and have both his ears nailed. And he ſhall be for ever diſabled to be a witneſs in any court of record.*

And *the judge of the court, where the perjury ſhall be, and the judges of aſſize, and juſtices of the peace in ſeſſions, may inquire, hear, and determine thereof, by inquiſition, preſentment, bill, or information, or otherwiſe.*

But this act ſhall not extend to any eccleſiaſtical court.

Alſo this ſtatute ſhall not reſtrain the authority of any judge, having abſolute power to puniſh perjury before the making thereof, but that every ſuch judge may proceed in the puniſhment of all offences puniſhable before the making of the ſaid ſtatute, in ſuch wiſe as they might have done, and uſed to do, to all purpoſes, ſo that they ſet not upon the offender leſs puniſhment, than is contained in the ſaid ſtatute. 5 El. c. 9.

Any witneſs] If the defendant perjureth himſelf in his anſwer in the chancery, exchequer chamber, or the like, he is not puniſhable by this ſtatute; for it extendeth but to witneſſes. 3 *Inſt.* 166.

By any writ, action, bill, complaint, or information] It hath been reſolved, that theſe words are to be extended to the latter clauſe concerning perjury, as well as to this concerning ſubornation; becauſe it cannot well be intended, that the makers of the act, who inflict a greater penalty on ſubornation of perjury, than on the perjury itſelf, ſhould mean to extend the purview of the law in relation to what they eſteemed the leſſer crime, farther than in relation to that which they eſteemed the greater. 1 *Haw.* 179. 5 *Co.* 99.

But it is to be obſerved, that perjury or ſubornation in an action depending by *indictment*, are not within this ſtatute; but only in an action depending by *writ, action, bill, complaint, or information.* 3 Inſt. 164.

Half to the party grieved] It hath been collected from this clauſe, that no falſe oath is within the meaning of this ſtatute, which doth not give ſome perſon a juſt cauſe of complaint: and upon this ground it hath been ſaid, that he who ſwears a thing which is true, but not known by him to be ſo, is not within this ſtatute; becauſe howſoever heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be ſaid to give him a juſt cauſe of complaint,

who would take advantage againſt another from his want of legal evidence to make out the juſtice of his cauſe. Alſo from the ſame ground it ſeemeth clearly to follow, that no falſe oath can be within the ſtatute, unleſs the party againſt whom it was ſworn ſuffered ſome kind of diſadvantage by it; for otherwiſe it cannot be ſaid, that any one was grieved by it: and therefore that in every proſecution upon this ſtatute, it muſt appear upon the trial, that there was ſuch a ſuit depending, wherein the party might be prejudiced in the manner ſuppoſed. 1 *Haw.* 181.

Either by ſubornation, or otherwiſe] It is not neceſſary to ſet forth in the indictment, whether the party took the falſe oath thro' the ſubornation of another, or without any ſuch ſubornation, theſe words being only ſuperfluity. 1 *Haw.* 179.

Wilfully and corruptly] Theſe words are neceſſary in an indictment or action on this ſtatute, and cannot be ſupplied by adding *againſt the form of the ſtatute*, or by concluding *and ſo a wilful and corrupt perjury did commit.* 1 Haw. 178.

Juſtices in ſeſſions] And one juſtice may bind the offender over to the ſeſſions. *Dalt. c.* 70.

But becauſe the proſecution upon this ſtatute is more difficult than by indictment at the common law, offenders are ſeldom proſecuted upon this ſtatute, eſpecially at the ſeſſions; and it ſeems generally the ſafer way to proceed by indictment at the common law, at the aſſizes, or in the court of king's bench.

Shall not reſtrain] From this it ſeemeth undoubtedly to follow, that the court of king's bench, *&c.* proceeding upon an indictment or information of perjury or ſubornation of perjury at the common law, may not only ſet a diſcretionary fine on the offender, but alſo condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. 1 *Haw.* 178.

III. Of matters common to them both.

Judges may direct proſecutions for perjury.

1. The judge of aſſize (ſitting the court, or within 24 hours after) may direct any witneſs, if there ſhall appear to him a reaſonable cauſe, to be proſecuted for perjury; and may aſſign the party injured, or other perſon undertaking ſuch proſecution, counſel, who are to do their duty *gratis:* and ſuch proſecution ſo directed ſhall be carried on without any duty or fees whatſoever. And the clerk of aſſize, or other proper officer of the court, ſhall give *gratis* to the party injured, or proſecutor, a certificate of the ſame being directed, together with the names of the counſel aſſigned him: Which certificate ſhall be ſufficient proof of ſuch proſecution being directed; provided that no ſuch direction or certificate ſhall be given in evidence on the trial. 23 *G.* 2. *c.* 11. *ſ.* 3.

On proſecution for perjury, it ſhall be ſufficient to ſet forth the ſubſtance of the offence.

2. And in every information or indictment for wilful and corrupt *perjury*, it ſhall be ſufficient to ſet forth the ſubſtance of the offence, and by what court, or before whom the oath was taken (averring ſuch court or perſon to have a competent authority to adminiſter

adminiſter the ſame) together with the proper averment or averments to falſify the matter wherein the perjury is aſſigned, without ſetting forth any part of the record or proceedings either in law or equity (other than as aforeſaid), or the authority of the court or perſon before whom the perjury was committed. 23 *G.* 2. *c.* 11. *ſ.* 1.

Likewiſe on a proſecution for ſubornation.

3. And in informations or indictments for *ſubornation* of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it ſhall be ſufficient to ſet forth the ſubſtance of the offence, without ſetting forth any part of the record or proceedings, or the commiſſion or authority of the court or perſon before whom the perjury was committed, or was agreed or promiſed to be committed. 23 *G.* 2. *c.* 11. *ſ.* 2.

Inſufficient indictment not quaſhed without pleading or demurrer.

4. The court generally will not quaſh an indictment for a crime of ſo enormous a nature as perjury, for inſufficiency in the caption or body of it, but will oblige the defendant either to plead or demur to it. 2 *Hawk.* 258.

Further puniſhment of perjury or ſubornation.

5. And for a further puniſhment of perjury or ſubornation of perjury, it is enacted by the 2 *G.* 2. *c.* 25. (which act is made perpetual by the 9 *G.* 2. *c.* 18) that beſides the puniſhment already inflicted, the judge may order the offender to be ſent to the houſe of correction, not exceeding 7 years, to be kept to hard labour; or otherwiſe to be tranſported for any term not exceeding 7 years.

Certiorari.

6. It ſeems that the court will not ordinarily at the prayer of the defendant grant a *certiorari* for the removal of an indictment of perjury; for ſuch crime deſerves all poſſible diſcountenance, and the *certiorari* might delay, if not wholly diſcourage the proſecution. 2 *Hawk.* 287.

Perjured perſon not to be a juror, or a witneſs.

7. A perſon convicted of perjury is diſabled from being a juror. 2 *Hawk.* 417. Or a witneſs. 2 *Hawk.* 433.

Quakers.

8. Quakers making ſolemn affirmation wilfully and corruptly, ſhall ſuffer as in caſes of perjury. 8 *G.* *c.* 6. *ſ.* 2.

Pardon.

9 Perjury and ſubornation are excepted out of the general pardon of the 20 *G.* 2. *c.* 52.

Perſonating bail. See Bail.

Petition.

BY the 13 *C.* 2. *c.* 5. No perſon ſhall ſolicite above 20 hands, to any petition to the king, or either houſe of parliament, for alteration of matters eſtabliſhed by law in church or ſtate, unleſs the matter thereof hath been conſented to by 3 or more juſtices of the county, or by the major part of the grand jury at the aſſizes or ſeſſions; nor ſhall preſent any ſuch petition accompanied with more than ten perſons, on pain of a ſum not exceeding 100*l.* and 3 months impriſonment, on conviction at the aſſizes or ſeſſions in 6 months, and proved by two witneſſes.

But

But this shall not extend to debar any persons (not above ten in number), to present any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any address to the king by the parliament.

Petit larceny. See Larceny.
Petit treason. See Treason.

Pewter and other metals.

Imported.

1. NO person shall buy, or take by exchange (or otherwise take into or within this realm to the intent to sell the same, 33 *H.* 8. *c.* 4. *f.* 7.) any wares made out of the realm, of tin or mixed with tin, as dishes, sawcers, flagons, spoons, or any other thing made of tin or pewter; on pain of forfeiting the same, and the value thereof, half to the king, and half to the finder. 25 *H.* 8. *c.* 9. *f.* 1.

And the master and wardens of the pewterers, and where there are none, the head officer of the town, may appoint searchers, who may seize the same. *f.* 2.

And persons interrupting or disturbing the said seizure, shall forfeit 5 *l.* half to the king, and half to him that shall sue. 33 *H.* 8. *c.* 4. *f.* 8.

Fineness in making.

2. No person shall cast or work any pewter vessel or brass, but that it be as good fine metal as the pewter and brass wrought in *London*, and as by the statutes of the same ought to be; on pain of forfeiting the same, half to the king, and half to the finder. But this not to extend to brass or pewter in the possession of any person, other than the worker, or such as have the same to sell, and being of the crafts or misteries. 19 *H.* 7. *c.* 6.

And no person shall make any hollow wares of pewter, to wit, salts and pots made of pewter called ley-metal, but after the assize of pewter and ley metal within *London*; and the makers shall mark them with their own mark, that they may avow the same by them wrought; and the same not sufficiently made and wrought, and not marked, found in possession of the maker or seller, shall be forfeited; and if the same be sold, the maker shall forfeit the value thereof, half to the king, and half to the finder or searcher. *id.*

And the master and wardens of the craft of pewterers, and where there are none such, the head and governors of the city or borough, may appoint searchers; and the justices at *Michaelmas* sessions shall appoint two persons, having experience therein, to search within the county. And of all such unlawful pewter or brass as they shall find, half shall be to the king, and half to the searchers. *id.*

And

And in default of the maſter and wardens not ſearching, any perſon having ſufficient knowledge in the ſaid occupations, by overſight of the mayor or other head officer of cities or boroughs, may ſearch. *id.*

3. If any untrue metal or workmanſhip of tin or pewter be found in any wares brought to be ſold, the mayor of *London*, and the maſter and wardens of the pewterers, may ſearch the ſame in the ſaid city; and in all other cities and towns where there are wardens, the mayors and wardens ſhall have like authority; and where there are no wardens, then the head officers of cities or towns ſhall appoint ſearchers; and if ſuch new wares wrought of tin and pewter be found defective, and in the poſſeſſion of the ſeller, the perſon putting them to ſale ſhall forfeit the ſame, half to the king, and half to the ſearcher or finder. 4 *H.* 8. *c.* 7. *ſ.* 7. Offering to ſale.

4. No perſon uſing the crafts of pewterer and brazier, ſhall ſell or change any pewter or braſs, at any place, but only in open fair or market, or in his own dwelling houſe, except he be deſired by the buyer of ſuch ware; on pain of 10 *l.* half to the king, and half to him who ſhall ſeize or ſue. 19 *H.* 7. *c.* 6. 25 *H.* 8. *c.* 9. *ſ.* 6. Selling, where.

5. Perſons uſing the buying and ſelling of pewter or braſs, who ſhall occupy any falſe beams or weights, and every perſon uſing the ſame, ſhall forfeit 20 *s.* half to the king, and half to him that ſhall ſue; and alſo the beams to him that ſhall ſeize them. 19 *H.* 7. *c.* 6. False weights.

And if the offender be not ſufficient to pay the forfeiture, the mayor or other head officer, where he ſhall be found, ſhall put him in the ſtocks, and ſo keep him till the next market day next adjoining, and in the market place put him in the pillory all the market time. *id.*

6. No perſon ſhall carry over ſea, any braſs, copper, latten, bell metal, pan metal, gun metal, nor ſhroff metal, whether it be clean or mixed (tin and lead only excepted); on pain of forfeiting double the value thereof (and 10 *l* for every thouſand weight, 2 & 3 *Ed.* 6. *c.* 37.) half to the king, and half to him that ſhall ſue. 33 *H.* 8. *c.* 7. Exporting.

Pheaſants. See Game.

Phyſicians.

1. NO recuſant convict ſhall practiſe phyſick, nor uſe the trade of an apothecary, on pain of 100 *l.* 3 *J.* *c.* 5. *ſ.* 8. Recuſants not to practiſe phyſick.

2. Apothecaries within *London* and 7 miles thereof, and alſo apothecaries in any other place who have ſerved 7 years apprenticeſhip, ſhall be exempted from the office of conſtable, ſcavenger, overſeer of the poor, and all other pariſh, ward, and leet offices, and from being put on any jury or inqueſt. 6 *W.* *c.* 4. Apothecary exempted from offices.

3. By

Surgeons exempted from offices.

3. By the 5 *H.* 8. *c.* 6. Surgeons ſhall be diſcharged of the conſtableſhip, watch, and all manner of office bearing any armour, and alſo of all inqueſts and juries *within London.*

And by the 18 *G.* 2. *c.* 15. All freemen of the ſurgeons company in *London*, ſhall be exempted from the office of conſtable, ſcavenger, overſeer of the poor, and other pariſh, ward, and leet offices, and from ſerving on juries and inqueſts. *ſ.* 10.

And Mr. *Hawkins*, ſpeaking of the former of theſe ſtatutes, ſays, It ſeems that by the equity thereof, and the ancient cuſtom of the realm, *all* ſurgeons have been allowed the like privilege; that is, whether in *London* or elſewhere. 2 *Haw.* 64.

Phyſicians exempted from offices.

4. By the 32 *H.* 8. *c.* 40. The preſident of the commonalty and fellowſhip of the faculty of phyſick in *London*, and the commons and fellows of the ſame, ſhall be diſcharged of watch and ward there, and ſhall not be choſen conſtable, or any other officer. *ſ.* 1.

Yet it ſeems to have been holden, that the equity of this act, doth not extend to other phyſicians not mentioned in it; perhaps for this reaſon, becauſe phyſicians have no ſuch ſpecial cuſtom for their diſcharge, as ſurgeons are ſaid to have. 2 *Haw.* 64.

And it ſeemeth, that a practiſing phyſician, being choſen conſtable in purſuance of a cuſtom in reſpect of his lands in a town, has no remedy for his diſcharge; for that there are no precedents of this kind, and his calling is private; yet if he be choſen conſtable of a town, which hath ſufficient perſons beſides to execute this office, and no ſpecial cuſtom concerning it, perhaps he may be relieved by the king's bench. 2 *Haw.* 63.

Searching for drugs.

5. All juſtices, mayors, ſheriffs, bailiffs, conſtables, and other officers in *London*, ſhall aſſiſt the preſident of the college of phyſicians, and perſons by them authorized, in ſearching for faulty apothecary wares. 1 *Mar. Seſſ.* 2. *c.* 9. *ſ.* 6.

Phyſician killing a patient.

6. If a phyſician gives a perſon a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a diſeaſe, and contrary to the expectation of the phyſician it kills him, this is no homicide; and the like of a ſurgeon. And I hold their opinion (ſays lord *Hale*) to be erroneous, that think if he be no licenſed ſurgeon or phyſician, that occaſioneth this miſchance, that then it is felony; for phyſick and ſalves were before licenſed phyſicians and ſurgeons; and therefore if they be not licenſed according to the ſtatute of the 3 *H.* 8. *c.* 11. or 14 *H.* 8. *c.* 5. they are ſubject to the penalties in the ſtatutes, but god forbid that any miſchance of this kind ſhould make any perſon not licenſed guilty of murder or manſlaughter. Theſe opinions therefore may ſerve to caution ignorant people, not to be too buſy in this kind in tampering with phyſick, but are no ſafe rule for a judge or jury to go by. 1 *H. H.* 429.

Pick-pocket. See Larceny.

Pigeons. See Game.

Pillory and tumbrel.

Pillory and tumbrel, what.

1. PILLORY is derived from *pilaſtre*, a pillar; for it is a wooden pillar, wherein the neck of the offender is put and preſſed: which kind of puniſhment is very ancient, and was uſed by the *Saxons*. 3 *Inſt.* 219.

The *tumbrel* ſeemeth to have been the ſame anciently with the *ducking ſtool*; an engine for the puniſhment of ſcolding women, by ducking them over head and ears in water, and eſpecially in muddy or ſtinking water, according to the etymology of Lord *Coke*, who tells us, that the word *tumbrel* ſignifieth a dung cart. *Lamb.* 61. 3 *Inſt.* 219.

Who ſhall find them.

2. Every one that hath a leet or market, ought to have a pillory and tumbrel to puniſh offenders; and it ſeems that a leet may be forfeited for not taking care to have a pillory and tumbrel. 3 *Inſt.* 219. 2 *Haw.* 75.

Infamy of the puniſhment.

3. They that have been adjudged to the pillory or tumbrel, are ſo infamous, that they ſhall not be received to be jurors or witneſſes. 3 *Inſt.* 219.

Caution in inflicting it.

4. And for that the judgment to the pillory or tumbrel doth make the delinquent infamous, the juſtices of the peace ſhould be well adviſed before they give judgment of any perſon to the pillory or tumbrel, unleſs they have good warrant for their judgment therein. Fine and impriſonment, for offences fineable by them, is a fair and ſure way. 3 *Inſt.* 219.

Inflicted by ſeveral ſtatutes.

5. But by ſeveral ſtatutes the puniſhment of the pillory is ſpecially ordained; as in the caſe of bakers, foreſtallers, uſers of falſe weights, and many others.

Plague.

Quarentine enjoined.

1. ALL veſſels, perſons, and goods coming from any place, from whence the king, with the advice of his privy council, ſhall judge probable that the infection may be brought, ſhall be obliged to make their quarentine in ſuch places, for ſuch time, and in ſuch manner as ſhall be directed by him, or by his order made in council, and notified by proclamation, or publiſhed in the gazette. 26 *G.* 2. *c.* 6. *ſ.* 1.

Orders for quarentine to be read in churches.

2. And when the king ſhall make any orders concerning quarentine, and notify the ſame by proclamation, or in the gazette, the ſame ſhall be publickly read the next *Sunday*, and the firſt *Sunday* in every month afterwards (during the time ſuch orders ſhall continue) immediately after prayers, in all places ſet apart for divine worſhip, within ſuch places as ſhall be ſpecified in ſuch proclamation or orders. *id. ſ.* 20.

Watchmen to be appointed.

3. And the juſtices of the counties adjoining, or one of them, ſhall forthwith, when quarentine ſhall be appointed, cauſe watches to be kept by day and night, in the moſt proper and convenient places, within the ſeveral adjacent pariſhes; who ſhall not permit any perſon whatſoever to come on ſhore from, or go on board any ſhips under quarentine, except only ſuch as ſhall have the charge of ſeeing the quarentine duly performed, or as ſhall be licenſed by ſuch perſon having charge of the quarentine. 9 *An. c.* 2.

And if any ſuperintendant of the quarentine, or watchman, ſhall neglect his duty, he ſhall be guilty of felony without benefit of clergy. 26 *G.* 2. *c.* 6. *ſ.* 17.

Maſters of ſhips to give notice.

4. And if the plague ſhall appear on board any ſhip, being to the northward of *Cape Finiſterre*, the maſter ſhall immediately proceed to the harbour of *New Grimſby* in *Scilly*; where he ſhall make known his caſe to ſome officer of the cuſtoms; who ſhall immediately acquaint ſome cuſtom houſe officer of ſome near port of *England*; who ſhall with all poſſible ſpeed ſend intelligence thereof to a ſecretary of ſtate: and the ſhip ſhall remain there till his majeſty's pleaſure be known; nor ſhall any of the crew go on ſhore. But if he ſhall not be able to make the iſlands of *Scilly*, or ſhall be forced by weather or otherwiſe to go up either of the channels; he ſhall not enter any port, but remain in ſome open road, till he receives orders from his majeſty, or his privy council; and ſhall prevent any of the crew from going out of the ſhip, and avoid all intercourſe with other ſhips or perſons. And the ſaid maſter, or any other perſon on board, who ſhall be diſobedient herein, ſhall be guilty of felony without benefit of clergy; and may be tried where the offence ſhall be committed, or where he ſhall be apprehended. 26 *G.* 2. *c.* 6. *ſ.* 2.

Veſſels to be examined.

5. And when any country or place is infected, or when any order ſhall be made by the king concerning quarentine, as often as any veſſel ſhall attempt to enter into any port, the principal officer of the cuſtoms there, or ſuch perſon as ſhall be authorized to ſee quarentine performed, ſhall go off, or cauſe ſome other perſon to go off, to ſuch veſſel; who ſhall at a convenient diſtance, demand of the commander, the name of the ſhip; the name of the commander; at what place the cargo was taken on board; what place the veſſel touched at in her voyage; whether ſuch places, or any, and which, were infected with the plague; how long ſhe hath been in her paſſage; how many perſons were on board when ſhe ſet ſail; whether any, and what perſons, during the voyage, have been or are infected; how many died in the voyage, and of what diſtemper; what veſſels he, or any of his company with his privity, went on board, or had any of their company come on board his ſhip, and to what place they belonged; and alſo the true contents of his lading, to the beſt of his knowledge: And if it ſhall appear on ſuch examination, or otherwiſe, that any perſon on board is infected, or that ſuch ſhip is obliged to perform quarentine; the officers of any of his majeſty's ſhips of war, or of any forts or garriſons, and all other his majeſty's officers whom it may concern, and others whom they

ſhall

ſhall call to their aſſiſtance, ſhall, on notice thereof, oblige ſuch ſhip to repair to the place appointed for quarentine, be it by firing of guns, or other force: And if ſuch veſſel ſhall come from any place infected, or have any perſon on board infected, and the maſter ſhall conceal the ſame, he ſhall be guilty of felony without benefit of clergy; and if he ſhall not make a true diſcovery in any other of the particulars, he ſhall forfeit 200 *l.* half to the king, and half to him that ſhall ſue. 26 *G.* 2. *c.* 6. *ſ.* 3.

6. And if any officer of the cuſtoms, or other officer, ſhall neglect his duty herein; he ſhall forfeit his office, and 100 *l.* in like manner. 26 *G.* 2. *c.* 6. *ſ* 11. Officer neglecting.

7. And the maſter, after his arrival at the place of quarentine, ſhall deliver on demand to the chief officer appointed to ſee quarentine duly performed, ſuch bill of health and manifeſt as he ſhall have received from any *Britiſh* conſul, together with his log-book and journal; on pain of 500 *l.* in like manner. 26 *G.* 2. *c.* 6. *ſ.* 4. Maſter to deliver his credentials.

8. And all perſons, liable to perform quarentine, ſhall be ſubject to ſuch orders as they ſhall receive from the officers authorized to ſee it performed; who ſhall have power to inforce obedience, and in caſe of neceſſity to call others to their aſſiſtance. 26 *G.* 2. *c.* 6. *ſ.* 9. Obedience inforced.

9. And any officer of the cuſtoms, or others, directed to take care of the quarentine, may ſeize any boat belonging to ſuch veſſel, and detain the ſame till quarentine be performed. 9 *An.* *c.* 2. Ships boats may be ſeized.

10. And if the commander of the ſhip ſhall go himſelf, or permit any ſeaman or paſſenger to go on ſhore, or on board any other veſſel, during the quarentine, without licence of the perſon having charge of the quarentine; the ſhip and tackle ſhall be forfeited to the king. 9 *An.* *c.* 2. Penalty of quitting the ſhip.

And if any perſon ſhall come on ſhore, or go aboard any other ſhip; the perſons appointed for ſeeing quarentine duly performed, may compel him to return and continue during the quarentine: And ſuch perſon ſo leaving ſuch ſhip, and being thereof (after expiration of the quarentine) convicted by oath of one witneſs, before one juſtice near, ſhall forfeit not exceeding 20 *l.* to be paid immediately to ſuch juſtice, who may reward the informer thereout not exceeding a third part, and pay the remainder (charges deducted) to the poor of the pariſh where the conviction ſhall be; and in default of payment, he may commit him to the houſe of correction, to be kept to hard labour not exceeding one month. 9 *An.* *c.* 2.

And by the 26 *G.* 2. *c.* 6. If the maſter ſhall quit, or knowingly permit any perſon to quit the ſhip, by going on ſhore, or on board any other veſſel, before the quarentine ſhall be performed, unleſs in ſuch caſes as ſhall be permitted by the orders concerning quarentine; or if he ſhall not, in convenient time after notice, cauſe the veſſel and lading to be conveyed to the place appointed for quarentine, he ſhall forfeit 500 *l.* half to the king, and half to him that ſhall ſue: And if any perſon ſhall ſo quit ſuch ſhip, all perſons by any kind of force may compel him

to return; and he shall for such offence be imprisoned 6 months, and forfeit 200*l.* half to the king, and half to him that shall sue. *s.* 5.

Persons going aboard.

11. And if any person shall go on board, and return from any ship, during the quarentine, without such licence; he may be compelled by the persons appointed as aforesaid, to return and continue on board during such quarentine; and the master of such ship shall there keep and maintain him. 9 *An. c.* 2.

In what case small vessels shall not be allowed to sail.

12. When any part of *Great Britain*, *Ireland*, *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, *France*, *Spain*, *Portugal*, or the low countries shall be infected, the king by proclamation may prohibit all small boats and vessels under the burden of 20 tons, from sailing out of port, till security be first given by the master, to the satisfaction of the principal officer of the customs, or chief magistrate of the port, by bond to the king with sureties, in the penalty of 300*l.* that he shall not go to or touch at any place mentioned in the proclamation; and that the master and every mariner and passenger shall, during the time aforesaid, not go on board any other vessel at sea; and that he shall not permit any person to come on board such boat or vessel at sea; and shall not receive any goods out of any other vessel; for which bond no fee shall be taken. And if such boat or vessel shall sail before such security given, the same, together with the tackle and furniture, shall be forfeited to the king; and the master, and every mariner therein, being thereof convicted, on his appearance or default, on oath of one witness, by one justice where the offender shall be found, shall forfeit 20*l.* half to the informer, and half to the poor of the parish where the offender shall be found, by distress; and for want of sufficient distress to be committed to prison for 3 months. 26 *G.* 2. *c.* 6. *s.* 19.

Lazarets to be appointed.

13. Whenever the king, with the advice and consent of parliament, shall direct lazarets to be provided, for receiving of persons obliged to perform quarentine, or for airing of goods, it shall be lawful to erect the same, either in any waste grounds or commons, or where there are not sufficient, in the several grounds of any person whatsoever, not being a house, park, garden, orchard, yard, or planted walk, or avenue to a house, paying for the same as shall be agreed on between the persons interested, and any two persons appointed by the king under his sign manual; and if they cannot agree, then the said two persons shall, 30 days before the sessions give to the occupier a notice in writing, describing the quantity of ground, and purporting that the consideration for the same will be settled by a jury at such sessions. And the justices there, on proof of such notice, shall charge the jury which shall attend there (or some other jury to be then and there impanelled and returned by the sheriff without fee) and cause to be sworn, well and truly to assess the value of such grounds, to whom the parties may have their lawful challenges; and the verdict of the said jury, and the judgment of the justices thereupon, shall be conclusive, and finally bind all parties; and thereupon the king shall hold such grounds for such term as he shall judge ne-

 cessary,

ceſſary, paying for the ſame ſuch rent or other conſideration as ſhall be ſo aſſeſſed. 26 *G.* 2. *c.* 6. *ſ.* 6.

And the officers authorized to put in execution ſuch orders as aforeſaid, ſhall cauſe all perſons obliged to perform quarentine, and all goods comprized in ſuch orders, to repair or be conveyed to ſome of the ſaid lazarets, or to ſuch other places as ſhall be provided according to ſuch orders. *id. ſ.* 7.

And if any perſon ſhall refuſe or neglect to repair, within convenient time after notice, to the lazaret or other place appointed, or ſhall eſcape or attempt to eſcape from thence, before quarentine performed; the watchmen, and other perſons appointed to ſee quarentine performed, by force may compel him to repair or return hither: and every perſon ſo refuſing or neglecting to repair thither, and alſo every perſon actually eſcaping, ſhall be guilty of felony without benefit of clergy. *id. ſ.* 8.

Perſons entring lazarets, not to return till quarentine performed.

14. And if any perſon not infected, nor liable to perform quarentine, ſhall enter any lazaret, or other ſuch place, and ſhall return or attempt to return, unleſs as permitted by ſuch orders; the watchmen, or other perſons appointed, by force may compel him to return and perform quarentine: and if he ſhall actually eſcape before he hath performed the ſame, he ſhall be guilty of felony without benefit of clergy. *id. ſ.* 10.

Aſſeſſment for relief of perſons in infected places.

15. And the mayor, head officers, and juſtices of the peace of every city, borough, town corporate, and places privileged, or any two of them, may aſſeſs every inhabitant, and all houſes of habitation, lands, tenements, and hereditaments, for the reaſonable relief of perſons infected with the plague, or inhabiting in infected houſes, and levy the ſame by warrant; and if the party to whom the warrant is directed ſhall not find any goods to levy the ſame; then upon return thereof, they ſhall by warrant cauſe the perſon to be arreſted, and committed to gaol till he ſhall pay. 1 *J. c.* 31. *ſ.* 2, 3.

And if the inhabitants of ſuch place ſhall find themſelves unable to relieve all ſuch perſons, then on certificate thereof by the ſaid magiſtrates or two of them, to the juſtices of the county of or near the ſaid city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infected, at ſuch weekly ſums as they ſhall think reaſonable, to be levied by their warrant by ſale of goods, and in default thereof, by impriſonment as aforeſaid. *id. ſ.* 4.

And if the infection ſhall be in a town where there are no juſtices, or in a village or hamlet; then two juſtices of the county may aſſeſs the inhabitants of the county, within five miles of the place infected, at ſuch weekly ſums as they ſhall think fit, for the reaſonable relief of places infected; to be levied by their warrant by ſale of goods, and in default thereof, by impriſonment as aforeſaid. *ſ.* 5.

All which ſaid taxes ſhall be certified at the next quarter ſeſſions, for ſuch town or county reſpectively; and there they may order the ſame to continue, or be enlarged or extended to any other part of the county, or otherwiſe determined. *ſ.* 6.

Officer making default in levying the same, shall forfeit 10*s.* to be employed to the charitable uses aforesaid. *s.* 6. But it is not said how this penalty shall be levied. . . .

Searchers for places infected.

16. And the justices, mayors, and other head officers, may appoint within their limits searchers, watchmen, examiners, keepers, and buriers for the places infected; and give them directions, and swear them for the performance thereof. 1 *J.* *c.* 31. *s.* 9.

Secreting goods under quarentine.

17. If any person shall conceal from the officers of quarentine, or convey any letters or goods from any ship under quarentine, or from any lazaret; he shall be guilty of felony without benefit of clergy. 26 *G.* 2. *c.* 6. *s.* 18.

Damaging goods.

18. If any officer or other person shall embezil or damage any goods performing quarentine; he shall pay treble damages, with full costs. 26 *G.* 2. *c.* 6. *s.* 11.

Discharge after quarentine performed.

19. After quarentine performed, and on proof thereof by the oaths of the master and two other persons of the ship, or by the oaths of two credible witnesses, before the customer, comptroller, or collector of that or the next port, or their deputies, or a justice near, and that the *vessel* and every such *person* are free from infection; and after producing a certificate thereof signed by the chief officer who superintended the quarentine; such officer of the customs, or justice, shall give a certificate thereof *(gratis)*, and thereupon the vessel and every such person shall be liable to no further restraint. 26 *G.* 2. *c.* 6. *s.* 13, 14.

And all *goods* liable to quarentine shall be opened and aired, as by such orders shall be directed; and after such order hath been complied with, and a certificate thereof given by the chief officer appointed to superintend the quarentine and airing of such goods, and proof made thereof by the oaths of two witnesses, before the customer, comptroller, or collector of the next port, or any of their deputies, or any justice living near; on certificate and return of such proof by such custom house officer to the commissioners of the customs, they or two of them by their order shall discharge the same. *s.* 15.

And if any person shall take any fee for such oath, order, or certificate; he shall forfeit 100 *l.* half to the king, and half to him that shall sue. *s.* 16.

And if any superintendant of the quarentine, or watchman, shall in such case give a false certificate; he shall be guilty of felony without benefit of clergy. *s.* 17.

Note; The abovementioned act of the 9 *An.* was repealed by the 7 *G.* *st.* 1. *c.* 3. but was revived by the 8 *G.* *c.* 8. which enacts, that neither the said statute of the 7 *G.* nor any thing therein contained, shall continue in force longer than *Mar.* 25. 1723.

Players.

1. EVERY person who shall for hire, gain, or reward, act, or cause to be acted, any play or other entertainment of the stage, or any part therein, if he shall have no legal settlement where he acts, without authority from the king or the lord chamberlain, shall be deemed a rogue and vagabond within the 12 *An.* (which act is repealed; but the same is re-enacted by the 17 *G.* 2. *c.* 5.) 10 *G.* 2. *c.* 28. *s.* 1.

Or otherwise he shall forfeit 50 *l.* in which case he shall not also suffer as a vagrant. *s.* 2.

2. And if any play, or part thereof, be acted in any place where wine, ale, beer, or other liquors shall be sold, the same shall be deemed to be acted *for gain, hire, and reward.* s. 7.

3. And no person shall for hire, gain, or reward, act or cause to be acted any new play, or any part therein, or any new part added to an old play, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain, 14 days before the acting, together with an account when and where it is intended to be acted, signed by one of the managers. *s.* 3.

And the lord chamberlain may prohibit the same as he thinks fit; and if any person shall act without such copy being sent, or against such prohibition, he shall forfeit 50 *l.* and the licence of the playhouse shall be void. *s.* 4.

4 And no person shall be authorized to act, except within the liberties of the city of *Westminster*, and where the king shall reside. *s.* 5.

5. All the said pecuniary penalties may be recovered in the courts at *Westminster*; or before two justices, by the oath of one witness, or confession, to be levied by distress; and for want of sufficient distress, the offender to be committed to the house of correction, not exceeding six months, to be kept to hard labour: or to the common gaol, not exceeding six months, without bail or mainprize: Persons aggrieved by order of the justices may appeal to the next sessions: The said penalties to be distributed, half to the informer, and half to the poor. *s.* 6.

Plate. See Excise.

Pluries capias. See Process.

Poison. See Homicide.

Polygamy.

BIGAMY is, where a man has two wives ſucceſſively, Polygamy where he has ſeveral wives at the ſame time. 3 *Inſt.* 88. *Stam.* 134.

By the ſtatute of the 1 *J. c.* 11. *If any perſon within his majeſty's dominions of* England *and* Wales, *being married, ſhall marry any perſon, the former huſband or wife being alive; ſuch offence ſhall be felony* (but within clergy.)

If the firſt marriage was beyond ſea, and the latter in *England*, the party may be indicted here, becauſe the latter marriage makes the offence; but if the firſt marriage was in *England*, and the latter beyond ſea, it ſeemeth that the offender cannot be indicted here, becauſe the offence was not within the kingdom. *Kely.* 79, 80.

But *this act ſhall not extend to any perſon, whoſe huſband or wife ſhall be continually remaining beyond the ſeas, by the ſpace of ſeven years together.* id.

And this, altho' the party in *England* hath notice, that ſuch huſband or wife is living. 1 *H. H.* 693.

Nor to any perſon whoſe huſband or wife ſhall abſent him or her ſelf, the one from the other, by the ſpace of ſeven years together, in any part of his majeſty's dominions, the one of them not knowing the other to be living within that time. id.

Nor to any perſon who ſhall be, at the time of ſuch marriage, divorced by ſentence in the eccleſiaſtical court. id.

And this divorce is to be underſtood not only *a vinculo matrimonii*, as for precontract, conſanguinity, or affinity, which diſſolveth the marriage, and therefore needeth not this proviſo; but alſo, and chiefly *a menſa & thoro*, as for adultery, which diſſolveth not the marriage, yet in reſpect of the generality of the words, a perſon divorced only *a menſa & thoro* is privileged from being a felon in marrying again, altho' the ſecond marriage is void. 3 *Inſt.* 89. 1 *H. H.* 694.

Nor to any perſon whoſe former marriage hath been, by ſentence in the eccleſiaſtical court, declared to be void, and of none effect. id.

Nor to any perſon, by reaſon of any former marriage made within age of conſent. id. That is, either the woman being under 12, or the man under 14. 3 *Inſt.* 89.

On a proſecution upon this ſtatute, the firſt and true wife is not to be allowed as a witneſs againſt the huſband; but it ſeems clear, that the ſecond wife may be admitted to prove the ſecond marriage, for ſhe is not his wife ſo much as *de facto*. 1 *H. H.* 693.

Pond. See Game.

Poor.

CONCERNING the binding and ordering of parish and other apprentices, see title Apprentices.

Concerning the filiation and maintenance of bastard children, see title Bastards.

Concerning the ordering of servants, and other workmen and labourers, see title Servants.

For these do fall-in with this title, no further than as they happen to become poor: Upon which account, their settlements are here treated of; but nothing otherwise in particular concerning them.

After having premised one general clause in the statute of the 17 *G.* 2. *c.* 38. *s.* 4. which seems to affect the whole law relating to this title, to wit, That *if any person shall be aggrieved by any thing done or omitted by the churchwardens and overseers, or by any justice of the peace, he may, giving reasonable notice to the churchwardens or overseers, appeal to the next general or quarter sessions, where the same shall be heard and finally determined; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter sessions; and the court may award reasonable costs to either party, as they may do by the* 8 & 9 W. *in case of appeals concerning settlements*; (This being premised) I shall treat of this extensive title, in the following order: That is to say,

I. Concerning the appointment of overseers, with their duty thereupon.
II. Of settlements.
III. Of removals.
IV. Of the poor rate, and other helps towards their relief.
V. Of the relief and ordering of the poor.
VI. Of the overseers account.
VII. Penalty of overseers for the neglect of ther duty.
VIII. Indemnity of overseers in the performance of their duty.

I Appointment of overseers, with their duty thereupon.

1. *The churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect* Appointment of overseers in parishes and townships.

speet to the greatness of the parish, to be nominated yearly in Easter *week, or within one month after* Easter, *under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the* quorum, *dwelling in or near the parish or division, shall be called overseers of the poor of the same parish.* 43 El. c. 2. s. 1.

And whereas the inhabitants of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, *the Bishoprick of* Durham, Cumberland, *and* Westmorland, *and many other counties in* England *and* Wales, *by reason of the largeness of the parishes, cannot reap the benefit of the said act of the* 43 El. *it is enacted, that all and every the poor, needy, impotent, and lame persons, within every township or village within the several counties aforesaid, shall be maintained, provided for, and set on work, within the several and respective township and village, wherein he shall inhabit, or wherein he was last lawfully settled; and there shall be yearly chosen and appointed two or more overseers, within every of the said townships or villages respectively.* 13 & 14 C. 2. c. 12. s. 21.

And *if any overseer shall die, or remove, or become insolvent, before the expiration of his office; two justices (on oath thereof made) may appoint another in his stead.* 17 G. 2. c. 38. s. 3.

And *if in any place no overseer shall be appointed, every justice of the division shall forfeit* 5 l. *to the poor of such place, to be levied by the churchwardens and overseers or one of them, by distress, by warrant from the sessions.* 43 El. c. 2. s. 10.

Of every parish] *E.* 8 *G. K.* and the inhabitants of *Rufford.* A *mandamus* was directed to the justices of the peace of the county of *Nottingham,* reciting that within the ville of *Rufford,* in the forest of *Sherwood,* there are divers substantial freeholders able to contribute to the maintenance of the poor, and that there are no churchwardens or overseers to make a rate, and that there are poor unprovided for; therefore it commands them to appoint overseers. They return that the ville of *Rufford* is part of no parish, but time out of mind has been extraparochial without church, chapel, or parochial rights, and that there never have been any overseers of the poor; and for that cause they cannot appoint. And there having been only an extrajudicial opinion of the court, in the case of *Dolting* and *Stokeland, H.* 11 *An.* that overseers of the poor might be appointed in an extraparochial place; the court directed an argument, that the point might be solemnly determined. And after argument and consideration of all the statutes relating to the poor, the court were of opinion, that the powers given by the 43 *El.* to be executed in parishes, were by the 13 & 14 *C.* 2. extended to all townships and villages, whether parochial or extraparochial; that although most of the forests in *England* are extraparochial, yet notwithstanding they ought to maintain their own poor; and consequently overseers might be appointed: for which purpose in this case a peremptory *mandamus* was awarded. *Str.* 512. 1 *Mod.* 39. 5 *Mod.* 273.

For the statute directeth overseers to be appointed within the several townships and villages within the several *counties* (without saying, within the several *parishes* in the said counties); so that if

it is a townſhip or village, and ſuch townſhip or village is within the *county*, it ſeemeth not to be material whether it is within any *pariſh* or not.

But a townſhip or village it muſt be. As in the caſe of *K.* and the inhabitants of *Welbeck* in the county of *Nottingham*, *M.* 14 *G.* 2. A *mandamus* was granted, ſuggeſting that there are ſeveral houſeholders and farmers inhabiting and reſiding within the village of *Welbeck*, able to provide for the poor; and therefore commands the juſtices to appoint overſeers of the poor. To this it is returned, that *Welbeck* is extraparochial, and is not, nor ever was reputed to be a village or townſhip, and therefore they cannot appoint any perſons to be overſeers. And upon argument this was held to be a good return. For though it doth not anſwer the ſuppoſal of the writ, as to there being ſeveral ſubſtantial houſholders and farmers; yet it anſwers the point in the 13 & 14 *C.* 2. *c.* 12. by ſaying it is no townſhip or village, or reputed as ſuch: and it is to ſuch places only that we can ſend a writ. *Str.* 1143.

And the like had been adjudged before, in the caſe of *Denham* and *Dalham*, *H.* 8 *G.* 2. And of *Stoke Prior* and *Grafton*, *E.* 10 *G.* 2. In which caſe of *Denham* and *Dalham*, it was adjudged, that *Southwold* an extraparochial place in the county of *Suſſex*, conſiſting of two houſes and 300 acres of land, was not a place liable to maintain its own poor, becauſe it had not the reputation of a ville, and two houſes were not ſufficient to make it ſuch; but that there ought to be ſeveral houſes and neighbours, and they ſhould have a petty conſtable. *Str.* 1004, 1071.

For a *townſhip* in ſtrictneſs ſeemeth to be nothing elſe but the conſtablewick or decennary, which anciently conſiſted of ten men with their families, of which the chief or head was the conſtable, otherwiſe called the tythingman, or headborough; although now for the moſt part, by reaſon of the increaſe of people, and the improvements of tillage, the decennary comprehendeth many more families than ten.

Four, three, or two] *M.* 13 *G.* 2. *K.* and *Harman.* An appointment of five overſeers was thought to exceed the direction of the ſtatute; but inaſmuch as the 13 & 14 *C.* 2. impowers the juſtices to appoint two or more (indefinitely) in townſhips or villages, and it hath been the cuſtom in large pariſhes to appoint more than four, the court would not quaſh the appointment. *Seſſ. C. V.* 2. 148.

Subſtantial houſholders there] *M.* 20 *G.* 2. Caſe of the overſeers of *Weobly* in *Herefordſhire.* There were two ſets of overſeers appointed, and both quaſhed; one, becauſe the perſons appointed were deſcribed only as *principal inhabitants*, inſtead of purſuing the words of the ſtatute, which are, *ſubſtantial houſholders:* and the other, becauſe it only called them ſubſtantial houſholders, without adding *there*, or *in the pariſh*; and this too was not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. *Str.* 1261.

And abundance of other orders have by the court of king's bench been quaſhed from time to time, for not ſetting forth that the perſons appointed were ſubſtantial houſholders.

It

It is ſaid, that a *woman* ought not to be appointed overſeer. *E.* 10 *An. Mod. Ca.* 77.

To be nominated yearly in Eaſter *week*] *E.* 13 *G.* 2. *K.* and *Clerkenwell.* The court ſeemed to think an appointment of overſeers on a *Sunday*, to be a good appointment; for it may be in *Eaſter* week, and this is the firſt day of the week. *Foley* 4.

Or within one month after Eaſter] *H.* 13 *G.* 2. *K.* and *Sparrow.* Upon a rule to ſhew cauſe, why the appointment of overſeers for the town of *Ipſwich* ſhould not be quaſhed, the objection was, that the juſtices upon a *mandamus* directed to them, had appointed overſeers, but that it was not within the month after *Eaſter*, but afterwards, and that conſequently the appointment was void. But by *Lee* Ch. J. who delivered the opinion of the court; As the juſtices are puniſhable by the act for not doing their duty, it would be a very hard conſtruction to make the act it ſelf void, for it would ſubject the pariſh to very great inconveniences, for a thing which is not in their power to prevent. To interpret an act of parliament, we muſt conſider the miſchief to be remedied, the remedy provided, and the true reaſon of that remedy. In this caſe, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the juſtices ſhall appoint overſeers, and that within ſuch a time. Now the juſtices have neglected their duty, in not appointing overſeers within the proper time, and by the act have forfeited 5 *l.* but that doth not make ſuch appointment void. Were the expreſs direction of the act, that they ſhould appoint in that and no other time, it would be otherwiſe; but here the ſtatute is only directory, and a penalty inflicted on the juſtices for not following ſuch directions. *Seſſ. C. V.* 2. 140. *Str.* 1123.

Under the hand and ſeal of two or more juſtices] *M.* 13 *G. Chilmerton* and *Flagg.* The *ſeſſions* appointed overſeers: but the order was quaſhed by the court of king's bench; becauſe the ſeſſions have no original juriſdiction in that caſe by the ſtatute. *Seſſ. C. V.* 1. 260. *Foley* 7.

And the reaſon is, becauſe the ſtatute gives a power of appealing to the ſeſſions againſt the order of appointment; which power by this means would be taken away.

In or near the pariſh or diviſion] *M.* 13 *G.* 2. *K.* and *Sparrow.* An appointment of overſeers, not mentioning the juſtices to be of the diviſion, was held to be good enough; for that the words in this caſe are only directory. *Seſſ. C. V.* 2. 140.

And many other counties in England *and* Wales] *T.* 27 *C.* 2. In the caſe of *Skillington* and *Norton*, it was held, that although other counties in general are here mentioned in the recital; yet the ſtatute doth not extend to any other counties but thoſe expreſly named, none others being ſpecified in the enacting part. 2 *Lev.* 142.

But afterwards, in the caſe of *Dolting* and *Stokeland*, *H.* 11 *An.* It was held by the whole court, that by reaſon of the words [*and many other counties in* England *and* Wales] the act is general, and extends

extends to other counties than thoſe named in the act, otherwiſe it would not extend to one county in *Wales*. *Foley* 98.

And in the caſe of *Clifton* and *Churcham*, *H.* 12 *G.* 2. It was adjudged, that the act extendeth to all counties, being equally beneficial to all; and that the counties there ſpecified are mentioned only as inſtances. And *Lee* Ch. J. ſaid that ſo it was determined, upon great debate and conſideration, in the aforeſaid caſe of *Dolting* and *Stokeland*; which caſe hath been ever ſince adhered to. *Andr.* 314.

2. And that the juſtices may know, what perſons are fit to be appointed overſeers, it is uſual and requiſite for them, to iſſue their precepts in ſome ſuch form as here followeth; *viz.* Warrant for returning liſts of overſeers.

Weſtmorland { To *Thomas Denniſon*, gentleman, high conſtable of *Kendal Ward* within the ſaid county.

WE *two of his majeſty's juſtices of the peace for the ſaid county, one whereof is of the* quorum, *do hereby require you forthwith upon your receipt hereof, to iſſue your warrants to all the petty conſtables within your ſaid Ward, in the form or to the effect, according as upon this our warrant is indorſed: Given under our hands and ſeals the* ——— *day of* ———

The form of the ſaid high conſtable's warrant to the petty conſtables.

Weſtmorland
Kendal Ward. { To the conſtable of———

BY *virtue of a precept from two of his majeſty's juſtices of the peace in and for the ſaid county (one whereof is of the* quorum) *to me directed, you are hereby required immediately upon ſight hereof, to give notice to all and every the overſeers of the poor within your conſtablewick, that they do make out a liſt in writing of a competent number of ſubſtantial houſholders within their reſpective diſtricts, and deliver in the ſame to the ſaid juſtices and others his ſaid majeſty's juſtices of the peace for the ſaid county, at* ——— *in* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the ſame day; to the end that out of the ſaid liſt the ſaid juſtices may appoint other overſeers of the poor for the year then next enſuing. And be you then there, to certify what you ſhall have done in the premiſſes. Herein fail you not. Given under my hand the* ——— *day of* ——— *in the year of our lord* ———

Tho. Denniſon, *High Conſtable.*

3. And the form of an appointment of overſeers, clear of the objections abovementioned, may be this: Form of an appointment of overſeers,

Weſtmorland WE *two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *one whereof is of the* quorum, *do hereby nominate and appoint* A. O. *and* B. O. *being ſubſtantial houſholders of the pariſh* [or, *townſhip*] *of* ——— *in the ſaid county, to be overſeers of the poor of the ſaid pariſh*

parish [or, *township*] *according to the direction of the statute in that case made and provided. Given under our hands and seals* (within a month after *Easter.*)

But by a remedial clause, in the act of the 17 G. 2. c. 38. It is enacted, that *the distress for the poor rate shall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overseers.* s. 8.

Appeal against the order of appointment.

4. *If any person shall find himself aggrieved, by any act done by the said justices; he may appeal to the general quarter sessions, whose order therein shall bind all parties.* 43 El. c. 2. s. 6.

To the general quarter sessions] This clause leaves the appeal at large, and doth not restrain it to the *next* sessions: But the abovementioned act of the 17 G. 2. directs the appeal to be to the *next* sessions, but yet not in negative words, so as to say, that it shall be at the next sessions, and not otherwise. So that both may seem to stand well together; and then the sense of the statute of the 17 G. 2. will be this, That the appeal against any thing done or omitted by the overseers or justices, in cases wherein no appeal is given by former statutes, must be to the next sessions only, because the clause which gives the appeal, limits it to such next sessions; but in cases wherein an appeal is given by former statutes, such appeal may be to the next sessions according to this clause, or may be according to the directions of such former statutes. And in truth many acts of the churchwardens and overseers may be so contrived, that they cannot be known before the next sessions, and it would give them a great opportunity of fraud, if they might be safe by concealing such practices, until the time of appealing to the next sessions should be expired. But then, in the case before us, there is no power to award costs, unless the appeal be to the next sessions by the 17 G. 2.

Overseer refusing to take the office.

5. *M.* 14 G. 2. *K.* and *Jones.* A person was indicted for not taking upon him the office of overseer; and by the court it was held to be an offence indictable; for that altho' the statute appoints a penalty, yet that penalty is not for refusing to take the office, but for neglect of duty in that office: and where a statute commands a thing, and appoints no penalty for disobedience, such offence is indictable as a contempt of the law. *Sess. C. V.* 2. 187. *Str.* 1146.

Overseers general duty.

6. The overseers thus appointed, and taking upon them the office, shall *within* 14 *days receive the books of assessments, and of accounts, from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears.* 17 G. 2. c. 38. s. 1, 11, 13.

And they shall take order from time to time, with the consent of two such justices as aforesaid, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain them; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade. Which said churchwardens and overseers, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such

such justices, shall meet at least once a month, in the church, on Sunday *in the afternoon, after divine service, there to consider of some good course to be taken, and order to be set down in the premisses; Upon pain that every one of them absenting themselves without lawful cause, from such monthly meeting, or being negligent in their office, shall forfeit for every default* 20 s. *to the poor; to be levied by some or one of the churchwardens and overseers, by warrant from two such justices, by distress; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid. Provided, that if any person shall be aggrieved by any act done by the said churchwardens and other persons, he may appeal to the general quarter sessions, whose order therein shall bind all parties.* 43 El. c. 2. s. 2, 6, 11.

In the church] But the penalty for not meeting in the church shall not be inflicted on the overseers of extraparochial places; because they have no church to meet in. 8 *Mod. E.* 7 *G.*

II. Of settlements.

By the common law, a settlement did imply no more, than a man's house and home and habitation; and at the common law a man might gain a settlement any where, and could not be removed, unless in the case of vagrancy. The statute of the 39 *El.* is the first statute that mentions the word *settlement*. The first day a man came into a parish, he was a stranger, the second day he was a guest, and the third he was an inhabitant. And until the dissolution of monasteries, the poor were in a great measure maintained by the religious houses. *Case of S.* 44.

Afterwards, when the statute of the 43 *El.* was made, by which every parish was to maintain its own poor; such persons were held to be the poor of any parish, as were settled there a convenient time, which was judged to be a month; so that a month's abode made an inhabitant. 2 *Salk.* 492.

But there remaining some doubts upon the said statute of the 43 *El.* the statute of the 13 & 14 *C.* 2. was made, which statute will often occur in the following sections, being the foundation of all the settlements as they stand at this day; upon which single act there have been more cases adjudged, than upon any other fifty acts in the statute book.

But that I may treat distinctly, and as clearly as may be, concerning this subject of settlements, (after having first premised one general rule which controlls almost all the cases of settlements, *viz.* That *no settlement can be legal, which is brought about by practice or compulsion*; Read. Tit. *Poor.*) I shall proceed in the following method:

i. Of persons having no settlement.

ii. Of certificates.

iii. Of settlement by birth, viz. *of bastards, and others.*

iv. Of

iv. Of the ſettlement of children with their parents.
v. Of ſettlement by apprenticeſhip.
vi. Of ſettlement by ſervice.
vii. Of ſettlement by marriage.
viii. Of ſettlement by continuing forty days after notice.
ix. Of ſettlement by paying pariſh rates.
x. Of ſettlement by ſerving a pariſh office.
xi. Of ſettlement by renting ten pounds a year.
xii. Of ſettlement by a perſon's own eſtate.

i. Of perſons having no ſettlement.

Whereas the number of poor, within England *and* Wales, *is very great and burdenſome; and whereas, by reaſon of ſome defects in the law, poor people are not reſtrained from going from one pariſh to another,* —— *it is enacted, that within forty days after any ſuch perſons ſhall come to ſettle in any tenement under* 10 l. *a year, two juſtices* (1 Q.) *may remove them to the place where they were laſt legally ſettled.* 13 & 14 C. 2. c. 12. ſ. 1.

Poor within England *and* Wales] By theſe words of reſtriction, and the word [*ſuch*] afterwards, which ſeems to have reference to thoſe kinds of poor only, and by the direction of *removing them to the place where they were laſt legally ſettled*, which can only mean where they were laſt legally ſettled within the then kingdom; it may ſeem, that other poor, not belonging to *England* or *Wales*, are not within the regulations of this ſtatute.

And in *Conrad*'s caſe, *T.* 6 *W.* it was adjudged and declared as follows: A woman and her two children landed at *Harwich* from *Holland*, and removing to another place, were ſent back by order of two juſtices; But by the court, The landing makes no ſettlement; and the order was quaſhed. And *Eyre* J. ſeemed to be of opinion, that this is a caſe omitted out of the ſtatute. *Comb.* 287.

And if there is a defect in the law with reſpect to the ſubjects of a foreign realm, the caſe of a *Scotchman* or *Iriſhman* in *England* ſeemeth to be not much different, except only when they ſhall become vagrants, for in ſuch caſe they may be ſent into *Scotland* or *Ireland:* But otherwiſe, if they be able to maintain themſelves, and commit no act of vagrancy, it doth not appear that they can be removed by order of two juſtices, as perſons likely to become chargeable. By which means they ſeem to be in a better condition in *England*, than the *Engliſh* ſubjects: for that, not being removable, until they be forced to aſk relief, and ſo thereby become vagrants, as wandring abroad and begging; they may continue undiſturbed, without the intanglements of a certificate, and conſequently are in a better capacity of gaining ſettlements, if

if not for themſelves, yet for their children born there, and for their ſervants and apprentices.

Within forty days] The ſtatute of the 1 *J.* 2. requires that ſuch 40 days continuance ſhall not make a ſettlement, but from the time of delivering notice in writing; and by the 3 *W.* it muſt be from the time of the publication of ſuch notice in the church: But it hath always been underſtood, that a perſon not removable need not to give ſuch notice; and that a perſon continuing 40 days *unremovable*, and a perſon *not removed* for 40 days after ſuch notice given and publiſhed, ſhall equally gain a ſettlement. Now the following caſe happened, *E.* 2 *G.* between the pariſhes of St. *Giles* and St. *Margaret*: An *Engliſhwoman* was married to a foreigner, who had no ſettlement in *England*; the huſband continued for the ſpace of 40 days in a pariſh unremovable, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him, as part of his family, for 40 days unremovable, ſhe did thereby gain a ſettlement: But by *Holt* Ch. J. Where a perſon ſtays 40 days in a place, whence he hath a right not to be removed, that gains a ſettlement; otherwiſe, where he only ſtays in a place, becauſe they do not know where to remove him. And in this caſe, he ſaid, that he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him ſtarve. *Stiff. C. V.* 1. 97.

But there is another thing to be conſidered. It appears, in that caſe, that there was a *terminus a quo*, but not a *terminus ad quem*; or in other words, that the man's ſituation in the pariſh was not ſuch as the law calls unremovable, as if he had rented a tenement of 10 *l.* a year; but that in fact he was removable, if they had known whither to have ſent him. But put the caſe, that he had rented a tenement of 10 *l.* a year; or, which is the ſame thing, that a *Scotchman* or *Iriſhman* had rented a tenement of 10 *l.* a year: The queſtion is, Whether by continuing thereupon 40 days unremovable, he would thereby have gained a ſettlement in purſuance of this ſtatute? If it is anſwered in the affirmative, then this will follow; that if he comes to reſide upon a tenement under 10 *l.* a year, and gives notice in writing, and cauſes the ſame to be publiſhed as the law requires, and continues 40 days after ſuch publication *unremoved*, he muſt by the ſame ſtatute gain a ſettlement. And if ſo, a *Scotchman* or *Iriſhman* may ſettle himſelf and his family in 40 days time, in any pariſh whatſoever, where he can procure any little cottage to live in, by giving and cauſing to be publiſhed ſuch notice as aforeſaid. For removed he cannot be; and continuing *unremoved* for 40 days after the publication of ſuch notice, he becomes afterwards *not removable*; and being not removable, and being ſettled, is the ſame thing. On the other hand, if we have recourſe to the obſervation abovementioned, and ſay, that this ſtatute extends only to the poor of *England* and *Wales*, then this will follow; that a *Scotchman* or *Iriſhman* can gain no ſettlement in *England* by virtue of this ſtatute, and if not by this, then not by any other of the ſubſequent ſta-

tutes concerning ſettlements, for that they are all relative thereunto, and depending thereupon; that is to ſay, in theſe circumſtances, a *Scotchman* or *Iriſhman* can gain no ſettlement in *England*, neither by renting 10 *l.* a year, nor by continuing 40 days after notice, nor by apprenticeſhip, nor by ſervice, nor by paying pariſh rates, nor by ſerving a pariſh office. Which *dilemma*, ſo far as I have obſerved, hath not yet been ſolved, nor conſidered.

ii. Of certificates.

Before we come to treat ſpecially of ſettlements, it will be neceſſary to ſpeak ſomewhat of certificates, as affecting ſettlements ſeveral ways.

By the 13 & 14 *C.* 2. *c.* 12. Power is given, upon complaint of the churchwardens or overſeers, within 40 days after a perſon is come to ſettle on any tenement under 10 *l.* a year, unto two juſtices (1 *Q.*) to remove ſuch perſon to the place where he was laſt legally ſettled, *unleſs he give ſufficient ſecurity for diſcharge of the pariſh, to be allowed by the ſaid juſtices.* ſ. 1.

And by the 8 & 9 *W.* *c.* 30. it is enacted as follows: Foraſmuch as many poor perſons chargeable to the place where they live, meerly for want of work, would elſewhere maintain themſelves, but not being able to give ſuch *ſecurity* as may be expected, on their coming to ſettle in any other place, It is therefore enacted, That *if any perſon who ſhall come into any pariſh or place there to reſide, ſhall at the ſame time procure, bring, and deliver to the churchwardens or overſeers of the pariſh or place where he ſhall come to inhabit, or to any of them, a certificate, under the hands and ſeals of the churchwardens and overſeers of any other pariſh, townſhip, or place, or the major part of them, or of the overſeers where there are no churchwardens; to be atteſted by two or more credible witneſſes, thereby owning and acknowledging the perſon mentioned in the ſaid certificate, to be an inhabitant legally ſettled in that pariſh, townſhip, or place; Every ſuch certificate, having been allowed of and ſubſcribed by two juſtices of the place from whence the certificate ſhall come, ſhall oblige the ſaid pariſh or place, to receive and provide for the perſon mentioned in the ſaid certificate, together with his family, as inhabitants of that pariſh, whenever they ſhall happen to become chargeable to, or be forced to aſk relief of the pariſh, townſhip, or place, to which ſuch certificate was given: And then, and not before, it ſhall be lawful for ſuch perſon, and his children, tho' born in that pariſh, not having otherwiſe acquired a legal ſettlement there, to be removed, conveyed, and ſettled in the pariſh or place, from whence ſuch certificate was brought.* ſ. 1.

And by the 3 *G.* 2. *c.* 29. *The witneſſes who atteſt the execution of the certificate by the churchwardens and overſeers, or one of the ſaid witneſſes, ſhall make oath before the juſtices who are to allow the ſame, that ſuch witneſs or witneſſes, did ſee the churchwardens and overſeers of the poor, whoſe names and ſeals are thereunto ſubſcribed and ſet, ſeverally ſign and ſeal the ſaid certificate;*

and that the names of such witnesses, attesting the said certificate, are of their own proper handwriting: Which said justices shall also certify, that such oath was made before them. And every such certificate so allowed, and oath of the execution thereof so certified by the said justices, shall be taken, deemed, and allowed, in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof. s. 8.

Procure ——— a certificate] *H.* 3 *G.* 2. *K.* and *St. Ives.* A *mandamus* was moved for, to compel the churchwardens and overseers to sign a certificate: But the court rejected the motion as a very strange attempt. *Sess. C. V.* 2. 128.

A certificate] The form of which certificate may be this:

Westmorland. WE *the churchwardens and overseers of the poor of the parish* [or, *township*] *of* ——— *in the said county of* Westmorland, *do hereby certify, own, and acknowledge, that* A. L. *yeoman, is an inhabitant legally settled in our parish* [or, *township*] *of* ——— *aforesaid. In witness whereof we have hereunto set our hands and seals, the* ——— *day of* ——— *in the year of our lord* ———

Attested by
A. W.
B. W.

A. B. } *Churchwardens.*
C. D. }
E. F. } *Overseers of the*
G. H. } *poor.*

We J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the county of* ——— *aforesaid, do allow of the abovewritten certificate. And we do also certify, that* A. W. *one of the witnesses who attested the same, hath this day made oath before us the said justices, that he the said* A. W. *did see the churchwardens and overseers of the poor of the said parish, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of* A. W. *and* B. W. *who are the witnesses attesting the said certificate, are respectively of their own proper handwriting. Given under our hands this* ——— *day of* ———.

Such certificate ——— shall oblige the said parish or place, to receive and provide for the person mentioned therein] Formerly it was held, that a certificate was only conclusive between the two parishes; but now it is held to be conclusive to all the world, as is determined in the following case; *viz.*

M. 9 *An. Honyton* and *St. Mary-Axe.* The question was, Whether the parish granting the certificate, was bound thereby as to the parish only to which the certificate was granted, or concluded as to all parishes whatsoever? *Parker* Ch. J. delivered the opinion of the whole Court: Before the statute, a certificate was only an evidence of a private undertaking between the parishes, in the nature of a contract; but now it is a solemn acknowledgment, like the conuzance of a fine; and thereby the party is owned to be legally settled there: and as all other parishes on this certificate are bound to receive him, so the parish that certifies is concluded as to all other parishes. 2 *Salk.* 535. *Foley* 177.

And the case is put even yet stronger in the following report: *T.* 20 *G.* 2. *K.* and *Hedcron.* The parish of *Maidstone* gave a certificate to *Hedcron*, acknowledging *Ric. Burden*, and *Mary* his wife, and their four children, to be legally settled at *Maidstone*. Afterwards it appeared, that *Mary* was not his lawful wife, but that he had a former wife then living. Upon which *Maidstone* acknowledged the settlement of the real and true wife, but not of the said *Mary* and her children; and pleaded that it would be hard that they should be forced to take two wives, and different children. But by the court, the parish that certifies must take care for whom they certify; and the certificate is conclusive. *Sess. C. V.* 2. 206. *Str.* 1233.

Whenever they shall happen to become chargeable] Yet a certificate to receive the persons whenever they become chargeable, is not binding against a subsequent settlement; for tho' it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law. *Harrison* and *Lewis*, 3 *Salk.* 253.

What hath hitherto been inserted under this head, is judged sufficient for this place, to set forth the law concerning certificates in general; what further belongs to the settlement and removal of certificate persons, will fall-in in its due course afterwards.

iii. Of settlement by birth; viz. *of bastards, and others.*

1. Of *bastards.*

Note; It is not in this place questioned, who shall or shall not be deemed a bastard, but the settlement only is considered of such as are first supposed to be bastards: other matters relating to them, as concerning their filiation, and maintenance, and the like, are treated of under title Bastards.

How far bastards are to be settled where born.

A bastard child is prima facie *settled where born:* This is an uncontroverted rule, and is ancienter than the statute of 13 & 14 *C.* 2. concerning settlements; and ancienter than the 43 *El.* which requires the poor to be maintained within their respective parishes; for in the statute of the 18th of *Eliz.* which takes order for the mother and reputed father to contribute towards their maintenance, it is thus recited in the preamble, *Concerning bastards begotten and born out of lawful matrimony, the said bastards being now left to be kept at the charges of the parish where they were born*———.

Nevertheless this rule admits of divers exceptions; which are as follows:

Bastard born in a place by collusion.

(1) If a woman comes into a place by privity and collusion of the officers where she belongs, and is there delivered of a bastard; such bastard gains no settlement, notwithstanding its birth. *Cas. of S.* 66.

And in the case of *Masters* and *Child*, *H.* 10 *W.* It was ruled, that if a woman big with child of a bastard, and settled in one

pariſh, is perſuaded to go into another, and there be delivered; this fraud will make the pariſh chargeable where the mother was ſettled, tho' the child was not born there: But if a woman, with child of a baſtard, come accidentally into one pariſh, and is perſuaded by ſome of the pariſhioners to go into another pariſh, which ſhe doth, and there is delivered, this ſhall not charge that pariſh which perſuaded her. 3 *Salk.* 66.

(2) Alſo, If a baſtard is born under an order of removal, and before the mother can be ſent to her place of ſettlement, being hindred by water or otherwiſe; ſuch baſtard ſhall not be ſettled where ſo born, but at the mother's ſettlement. *M.* 10 *An.* 2. and *Ickleford. Seſſ. C. V.* 1. 33. *Caſ. of S.* 66. Baſtard born after the order of removal is made out.

(3) So alſo, If the officers are carrying a woman by virtue of an order of removal, and ſhe be delivered on the road *in tranſitu*; the baſtard ſhall go with the mother where ſhe is going, by virtue of the order, notwithſtanding the birth. *E.* 10 *An. Jane Grey*'s caſe. *Caſ. of S.* 66. Baſtard born in removing.

(4) Again, In the caſe of *Much-Waltham* and *Peram*, *M.* 8 *W.* A woman big with a baſtard child, was removed by order of two juſtices, from *Much-Waltham* to *Peram*. Before the next ſeſſions, ſhe was delivered at *Peram* of a baſtard child. At the ſeſſions, *Peram* appealed, and the juſtices adjudged the woman to be laſt ſettled at *Much-Waltham*, and ordered her to be ſent back thither. After which, an order was made, to ſettle the child at *Peram*; which it was moved to quaſh, becauſe tho' regularly baſtards muſt be maintained where born, yet in this caſe, where there ſeems to be a contrivance, it ſhall not be ſo. The court ſeemed to agree to this, and a rule was made to ſhew cauſe, but none was ſhewed. 2 *Salk.* 474. Baſtard born after the removal and before the appeal.

And further, In the caſe of *Weſtbury* and *Coſton*, *H.* 2 *An.* A woman big with child was removed by order of the juſtices, from *Weſtbury* to *Coſton*: And, pending the order, before the next quarter ſeſſions, ſhe was delivered of a baſtard child. *Coſton* appealed, and thereupon the order of the two juſtices was reverſed; but the child was ſent back to *Coſton*, as the place of its birth. But by the court, the birth at *Coſton*, did not ſettle the child there, becauſe it was under an illegal order procured at *Weſtbury*, which order being reverſed, the matter is no more than this, that they unjuſtly procured the woman to go thither. And *Holt* Ch. J. ſaid, Tho' here be no fraud in this cauſe, yet here is a wrongful removal, and the reverſal makes all void *ab initio*: Fraud, or not fraud, is not material in this caſe; but the ſettlement of the child depends upon the removal, for if that was wrong, they ſhall not eaſe themſelves by it. 1 *Salk.* 121. 2 *Salk.* 532.

(5) So alſo, By the ſtatute of the 17 *G.* 2. *c.* 5. Where any woman, wandring and begging, ſhall be delivered of a child, in any pariſh or place, to which ſhe doth not belong, and thereby becometh chargeable to the ſame; the churchwardens or overſeers may detain her, till they can ſafely convey her to a juſtice of the peace. And if ſuch woman ſhall be detained and conveyed to a juſtice as aforeſaid, the child of which ſhe is delivered, if a baſtard, ſhall not be ſettled in the place where ſo born, nor be ſent Baſtard born in a ſtate of vagrancy.

thither by a vagrant pafs; but the settlement of such woman, shall be deemed the settlement of such child. *S.* 25.

Bastard born in prison.

(6) A child born in the house of correction, shall be sent to the place of it's mother's settlement. 2 *Bulstr.* 358.

And in the case of *Elsing* and the county gaol of *Herefordshire*, *H.* 2 *G.* A bastard was born in the county gaol: Resolved, that the settlement was with the mother. *Sess. C. V.* 1. 94.

Bastard born under a certificate.

(7) *T.* 5 *G. New Windsor* and *White Waltham.* The parish of *White Waltham* gave a certificate to a man and a woman supposed to be his wife, with which they went into the parish of *New Windsor*, and had there six children. Afterwards, the woman swearing they were never married, the question was, whether (upon that supposition) the children, as bastards, should be settled in the parish where they were born, or in the parish which gave the certificate with their father and mother. And by the court, there is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard *his* or *her* child within the intention of the statute, so as to be sent back with the parent. *Str.* 186.

But in this case the point turned chiefly upon the certificate's being conclusive (for as the parish had given a certificate with the man and woman, as husband and wife, the court held that they were not afterwards to be admitted to dispute the validity of such marriage, but adjudged the children to be settled in the parish granting the certificate); Therefore in the case of *Hynton* and *Lydlinch*, *T.* 15 *G.* 2. the matter came under debate again; which was thus: A single woman went into the parish of *Lydlinch*, with a certificate from *Hinton*; lived there a year, and then had a bastard child. The sole question was, Whether the child should be settled in the parish where born, or in the parish giving the certificate. By the court; The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish, before she was delivered of the child; and wherever this court, in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point, have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is; for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands intirely on the 8 & 9 *W.* which for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given, to receive and continue them in that parish, till they become actually chargeable, and then such person is to be removed, together with his or her *family*, and in another place, with his or her *children*, to the place from whence the certificate was brought. The question then is, whether the bastard is included under the words *family* or *children*; and we take it he is not: for the law takes no notice of bastard children, they are *filii nullius*, *filii populi*, and

are

are *prima facie* ſettled where born. *Nelſ. Baſt. Seſſ. C. V.* 2. 170. *Str.* 1168.

Hitherto concerning the ſettlement of a baſtard child: But notwithſtanding the child's ſettlement, yet nevertheleſs if the mother and the child have different ſettlements, it ſeemeth that the baſtard child, even as all other children, ſhall go with the mother for nurture until the age of 7 years, and be maintained at the charge of the pariſh where the mother is ſettled, as a neceſſary appendage of the mother, and inſeparable from her; for there doth not ſeem to be any law to force the child from the mother, or to compel the pariſh where it was born to maintain it whilſt it is out of their pariſh. Baſtard not to be removed whilſt a nurſe child.

As to its being inſeparable from the mother, the following caſe happened, *M.* 3 *G.* 2. *Skeffreth* and *Walford.* The order was, to remove a woman to her ſettlement; and her baſtard child, of two years of age, to another pariſh at a diſtance from the mother, being the place of its birth. It was objected, that the child being a nurſe child, they cannot ſeparate it from the mother, by reaſon of the care neceſſary to nurture ſo very young a child; which none can be ſuppoſed ſo fit to adminiſter as the mother of it; and therefore it ſhould have been ſent with her to the place of her ſettlement. And it was quaſhed by the court for that reaſon. *Seſſ. C. V.* 2. 90.

But altho' the child may not be ſeparated from the mother, yet if ſhe voluntarily deſert it, it ſeemeth that the cauſe of nurture then ceaſeth, and that then it may be ſent to its place of ſettlement.

2. Of *legitimate children.*

In the caſe of *Rickmanſworth* and *St. Giles*'s; A child was ordered to be removed from the pariſh of *Rickmanſworth* to the pariſh of *St. Giles*, as being the place of his birth, the place of his father's laſt legal ſettlement being not known: For where the father's place of laſt legal ſettlement of a legitimate child is not known, there the child may be ſent to the place of its birth, as well as an illegitimate one. *Black.* 246. How far legitimate children ſhall be ſettled where born.

H. 8 *An. Cripplegate* and *St. Saviour*'s. A child of 3 years of age was removed from one of theſe pariſhes to the other, and it appeared in the order, that they removed him there, becauſe he was born there, not having any other ſettlement. By the court; The father's ſettlement is the ſettlement of the children, when it can be found out; otherwiſe the birth of the child *prima facie* is the ſettlement of the child, until there is another ſettlement found out. So a baſtard child's ſettlement is its birth, becauſe it is *filius nullius*; ſo if they cannot find out the ſettlement of a legal father, the birth is a ſettlement of the child. If a child be dropt in a pariſh, they may remove him to the place of his birth, or where his father's ſettlement was; and the ſettlement by birth is only *quouſque* they find the father's ſettlement; and if they never can find that, it is abſolute upon them. *Foley* 265.

But here it is to be obſerved, that in the two caſes abovementioned, the point was not in queſtion, whether or no if the father had no ſettlement, yet if the *mother* had a ſettlement, ſuch chil-

dren ſhould follow the mother's ſettlement, or ſhould be ſent to the place of their birth; and there will appear good opinions in the next courſe of ſettlements, that if the father hath no ſettlement as being a foreigner, or if the father's ſettlement is not known, yet if the mother hath a ſettlement, the children in ſuch caſe ſhall not be ſent to the place of their birth, but to the place of their mother's ſettlement: But the rule intended to be drawn from theſe caſes, which is ſufficient for this place, and which the caſes will well bear, is no more than this, that the place of the birth of a legitimate child is the ſettlement of it, until another ſettlement be found out.

iv. Of the ſettlement of children with their parents.

Settlement of a legitimate child with the parents.

1. The birth of legitimate children doth not give them a ſettlement, except where the ſettlement of their father and mother is not known, and then only till it is known. *Foley* 269.

At what age a child may gain a ſettlement diſtinct from the parents.

2. Formerly it was held, that a child ſhall continue with its parents as a nurſe child, until it ſhall be 8 years of age, during which time it ſhall not be deemed capable of gaining a ſettlement in its own right; but by the later reſolutions it ſeems to be agreed, that a legitimate child ſhall neceſſarily follow the ſettlement of its parents as a nurſe child, or as part of the family, only until it ſhall be 7 years of age; and that after that age it ſhall not be removed as part of the father's family, but with an adjudication of the place of its own laſt legal ſettlement, as being deemed capable at that age of having gained a ſettlement of its own. But it ſeemeth not difficult to determine with exact certainty, at what age a child may have acquired a ſettlement of his own, diſtinct from the parents ſettlement. For by the 5 *El. c.* 5. *ſ.* 12. A child of 7 years of age may be bound apprentice to a ſhipwright, fiſherman, owner of a ſhip, or other perſon uſing the trade of the ſeas; and by the vagrant act of the 17 *G.* 2. a vagrant's child of that age may by the juſtices be put out an apprentice: And ſo ſoon as he ſhall have reſided and lodged in a pariſh for 40 days under the indenture, he will have thereby gained a ſettlement. So that the preciſe time, when a perſon may have gained a ſettlement in his own right, is at the age of 7 years and 40 days.

Father living.

3. *E.* 10 *An.* Q. and *St. Giles*'s. Order to remove an infant to the pariſh of *St. Giles*'s; becauſe it appeared, that tho' the father was ſettled at another place, yet the child was born at *St. Giles*'s. Quaſhed, by the court; for that the place of the ſettlement of the child is with the father, and not the place where the child was born. *Seſſ. C. V.* 1. 18.

H. 10 *G. St. Giles's Reading* and *Everſley Blackwater.* It was ruled by all the court upon argument, that where a father gains a ſecond ſettlement after the birth of his child, that ſettlement is immediately communicated to the child. And a child may be ſent to the place of his father's ſettlement, without ever having been there before. *Seſſ. C. V.* 2. 112. *Str.* 580.

M. 12 *G.* 2. *Souton* and *Sidbury*. The queſtion was, whether the children, being above the age of nurture, ſhall be removed with the father to the farther's ſettlement, where the children had never inhabited? By *Lee* Ch. J. In the caſe of *Everſley Blackwater*, the court were of opinion, that a child might be ſent to the ſettlement of his father, tho' it had never been there before, contrary to an opinion of L. *Parker* in a former caſe. And he ſaid, the true diſtinction, I think, is, that where children have gained no ſettlement, but continue part of their father's family, they ſhall follow their father's ſettlement. *Seſſ. C. V.* 2. 150. *Andr.* 345.

T. 2 *An. Comner* and *Milton*. A man ſettled at *Comner*, and having ſeveral children born in that pariſh, afterwards removed to *Milton* with his children, and gained a ſettlement there; and becoming very poor, his children born in *Comner*, were by an order of two juſtices ſent to *Comner*, *viz.* thoſe that were under 7 years old; the juſtices apprehending, that the place of their birth was the place of their lawful ſettlement. And this order being removed into the king's bench by *certiorari*, it was inſiſted to maintain the order, that the children had gained a ſettlement in *Comner* by birth, which was not altered or defeated by any ſubſequent act of their father in gaining a ſettlement at *Milton*; for his children were with him there only as nurſe children, and his ſettlement ſhall not be the ſettlement of the children. But by *Holt* Ch. J. The place where a baſtard is born, is the place of his ſettlement, unleſs there is ſome trick to charge the pariſh; but the place where legitimate children are born, is not the place of their ſettlement, for let that be where it will, the children are ſettled where their parents are ſettled; as for inſtance, if the father is ſettled in the pariſh of *H.* but goes to work in the pariſh of *B.* and before he gains any ſettlement there, has a ſon born in the pariſh of *B.* and then dies; this child may be ſent to the pariſh of *H.* for it is not the birth, but the ſettlement of the father, that makes the ſettlement of his child; and if the father hath gained a new ſettlement for himſelf, he hath likewiſe gained a new ſettlement for his children, who do not go with him to his new ſettlement as nurſe children, but as part of his family. 3 *Salk.* 259

The foregoing caſes proceed upon a ſuppoſition that the children are part of the father's family; the two following caſes are, where the child was no part of the father's family, but had left the father, and afterwards the father acquired a new ſettlement; and the queſtion was, whether in ſuch caſe the ſon (having gained no ſettlement of his own in the mean time) ſhall follow the father's new acquired ſettlement.

T. 7 *G. Eaſtwoodhay* and *Weſtwoodhay*. Upon appeal from an order of two juſtices, for the removal of *Robert Baker*, from the pariſh of *Weſtwoodhay* to the pariſh of *Eaſtwoodhay*, the ſeſſions ſtate the fact ſpecially for the opinion of the court: That forty years ſince, *Thomas Baker*, the father of this *Robert*, was ſeiſed in fee of a freehold eſtate in the pariſh of *Hamſtead Marſhal*, where he lived till the year 1697, and had this ſon *Robert*, who

was

was at that time eight years old: That in 1697, *Thomas* the father and all his family removed to *Cheveley*, where he rented a tenement of 20*l.* a year, for two years: That in 1699, he purchaſed a copyhold eſtate of 11*l.* a year in the pariſh of *Weſtwoodhay*, whither he removed with his ſon and ſervants, and ſerved churchwarden and other pariſh offices, and paid taxes, and ſtaid there till the year 1716: That in 1716, he purchaſed a cottage of 1*l.* 12*s.* 6*d.* a year in *Eaſtwoodhay*, and went and lived upon it till his death; but *Robert* the ſon ſtaid behind in *Weſtwoodhay*, where he married a wife, and has worked ever ſince on his own account, and that he is 30 years old. Upon the whole, the ſeſſions confirm the order of the two juſtices for his ſettlement at *Eaſtwoodhay*. It was moved to quaſh the order of ſeſſions, for that the ſettlement of *Robert* the ſon is either at *Hampſtead Marſhal*, where he was born, and where he lived till eight years old; or if it ſhould be carried ſo far, as that he gained a new ſettlement with the father, by removing with him as part of his family, according to the caſe of *Cumner* and *Milton*, yet that can carry him no farther than *Weſtwoodhay*, which is the laſt place to which he accompanied his father: but let the ſettlement be in either, it is not material now; the only queſtion being whether here is any ſettlement in *Eaſtwoodhay*, for which there is no colour. On the other hand, it was inſiſted, that let the ſon be of what age he will, he ſhall follow the ſettlement of the father, till he gains one by his own acquiſition; and it appearing he had never done any thing to gain a ſettlement by act of his own, either in *Hampſtead Marſhal*, *Cheveley*, or *Weſtwoodhay*, then he muſt follow the ſettlement of the father as well in *Eaſtwoodhay* as in any of the reſt. *Pratt* Ch. J. The queſtion is not, where this man and his family are ſettled, but whether there appears a ſettlement of him in *Eaſtwoodhay*. If he had gone thither with his father, as part of the family; poſſibly it might have been a ſettlement of him there: but by ſtaying behind, he was divided from his father, and therefore there is no colour to make it a ſettlement in *Eaſtwoodhay*. I think his ſettlement is in *Weſtwoodhay*, which was the laſt place where he lived as part of the father's family. To which the reſt of the court agreed: And the order was quaſhed. *Str.* 438.

E. 2 *G.* 2. *St. Michael's Norwich* and *St. Matthew's Ipſwich*. Two juſtices made an order, to remove *Edmund Williams*, *Anne* his wife, and *Edmund*, *Solomon*, and *Amy*, children of the ſaid *Edmund* the father, from the pariſh of *St. Michael* in *Norwich*, to the pariſh of *St. Matthew* in *Ipſwich*. Upon an appeal from this order, the ſeſſions ſtated the matter ſpecially, *viz.* That *Edmund Williams* the elder, father of *Edmund Williams* the father of the ſaid children, was ſettled at *Shipton Mallet* in *Somerſetſhire*; and afterwards removed to *Bruton* in the ſaid county, and had a writing given him from *Shipton Mallet*, acknowledging his legal ſettlement to be there; by virtue of which he continued at *Bruton* for 20 years, where *Edmund* the ſon was born; and that he continued there with his father till he was 19 years of age, and was bred up to his father's buſineſs of a woolcomber.

Then

Then *Edmund* the ſon left his father, and came to *Norwich*, and there he married two wives; by the firſt, he had *Edmund* the grandſon; and ten years after, his wife died. Then he married *Anne* his now wife; by whom he had *Solomon* and *Amy* two other children; ſince whoſe birth, about two years ago, *Edmund Williams* the grandfather gained a new ſettlement at *St. Matthew's Ipſwich:* But *Edmund* the ſon hath never lived with his father at *Ipſwich*, or any where elſe, ſince the lived with him at *Bruton*. The queſtion was, Whether the perſons removed, to wit, *Edmund* the ſecond, his wife, and three children, ſhould follow the ſettlement of the grandfather at *Ipſwich*, or whether they ſhould not be looked upon as ſeparated from the grandfather's family, eſpecially after ſo long an interval of time? Mr. J. *Reynolds*; I do not ſee how the father can gain a ſettlement for the ſon, ſo many years after the ſon has left him. Lord Ch. J. *Raymond*; I think it is odd, that an old man of ſixty, who has left his father for 40 years, ſhall follow the ſettlement of his father, as oft as his father removes. In the caſe of young children it is otherwiſe; for they cannot be ſevered from their parents, becauſe of nurture. And by the whole court; The reaſon why we inquire into the ages of children is, becauſe if they are grown up, and above 7 years old, they may gain a ſettlement by their own act; but it is almoſt a contradiction in terms to ſay, that a man who has left his father 40 years, ſhall follow the ſettlement of his father. *Seſſ. C. V.* 2. 129. *Str.* 831.

4. *H.* 10 *G. St. Giles*'s and *Everſley Blackwater*. Tho' the place of the birth of a child, where the father hath no ſettlement, is the place of the ſettlement of the child; yet where the father hath gained a ſettlement, his children, tho' born in another pariſh, ſhall be looked on as ſettled at the place of their father's laſt legal ſettlement, and ſhall be removed thither, as well after the death of their father, if occaſion requires, as in his life time, ſuppoſing they have gained no ſettlement of their own. L. *Raym.* 1332. *Str.* 580. Father dead.

T. 8 *W. K.* and *Luckington*. *Howel* and his wife were ſettled at *Luckington*, and came to *St. Auſtin*'s, and there a child was born. The father dies in the king's ſervice. The queſtion was, who ſhall keep the child? It was objected, that it was ſettled where born; for that they could not ſend it to the father, when he was dead. But by *Holt* Ch. J. The death of the father doth not alter the child's ſettlement. *Comb.* 380.

5. *M.* 1 *G. St. George*'s and *St. Katherine*'s. A man ſettled in *St. Katherine*'s, married, and had ſix children born there, and died. After his death, the widow goes into the pariſh of *St. George*, with her ſix children, and rents a houſe of 12 *l.* a year, and lives in it with her children four months. The ſingle queſtion was, whether the children ſhould be ſettled, where their father was laſt ſettled, or have a ſettlement with the mother in the pariſh of *St. George*; and the whole court were of opinion, that the ſix children were ſettled in the pariſh of *St. George*, where the mother's laſt ſettlement was. And by *Parker* Ch. J. There is no diſtinction between the ſettlement of children with the father Father dead and the mother a widow.

ther or mother; for they are as much her's as the father's, and nature obliges her, as much as the father, to provide for them; so does the law, and every argument that holds for their settlement with the father, holds as to their settlement with the mother. The reason why children shall not gain a settlement, where the widow gains a settlement only by intermarriage, is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her. *Foley* 254. *Sess. C. V.* 1. 69.

H. 13 *G. Woodend* and *Paulespury. John Buncher* was settled at *Woodend*, and died, leaving a widow, and one daughter aged 14 years. The widow removed to *Paulespury*, into a messuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, whether the daughter gained a settlement at *Paulespury?* And it was adjudged that she did; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also, as part of her family. And there is no difference, between a father's gaining a settlement, and a mother's in such a case as this; for the mother is obliged to provide for her children after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could she be removed from her. L. *Raym.* 1473. *Fol.* 256. *Str.* 746.

The same resolved in the case of *Barton Tuff* and *Happisburgh*. *T.* 8 & 9 *G.* 2. *Sess. C. V.* 1. 317.

Father dead, and the mother married again.

6. *H.* 13 *G. Woodend* and *Paulespury*. If after the husband's death, the wife shall marry again, to a man settled in another parish; her children by her former husband must go with her for nurture, yet they are no part of her second husband's family; and therefore gain no settlement thereby, in the parish where the father in law is settled. L. *Raym.* 1473.

T. 2 *An. Comner* and *Milton*. 2 *Salk.* 482. *M.* 10 *W.* 3 *Salk.* 259. If after the death of the father, the mother marries again, to a husband who is settled in another parish; her children, such of them as are above 7 years old, shall not be removed; those under, shall be removed, but that only for nurture, for they shall be kept at the charge of the other parish, where their father whilst living was settled; and to that parish they may be sent after 7 years old, as to the place of their lawful settlement; for this accidental settlement of their mother, which was only by the marriage with a second husband, and as she is now become one person with him, shall not gain a settlement for her children.

Note; this authority is only produced here, to shew the *settlement*, as to which it may be good enough; but as to the *maintenance* (as hath been intimated before, and as will be considered more at large when we come to treat of the maintenance of the poor) it doth not seem sufficiently to appear, how one parish may be

be compelled to maintain their poor reſiding in another pariſh, unleſs it be in the caſe of perſons reſiding under a certificate.

7. *E.* 8 *G.* 2. *K.* and *St. Mary Berkhamſtead.* The father ran away, and the mother went and reſided on an eſtate deviſed to her: The queſtion was, whether the children could gain a ſettlement, by reſiding with the mother on ſuch eſtate, where the father had never lived? By *Hardwick* Ch. J. As it doth not appear, that the father is dead, we muſt ſuppoſe him to be living; and in ſuch caſe, the children could gain no ſettlement, but what is derived from the father. *Seſſ. C. V.* 2. 182. Father run away, whether the child can gain a ſettlement with the mother.

8. *H.* 12 *G. K.* and *Weſterham.* An *Engliſhman*, whoſe ſettlement was not known, married, had a child, and ran away: The child was then 9 years of age. By the court, the mother and child ought to be ſettled, where the mother was ſettled before marriage. *Foley* 252. Father having no ſettlement, whether the child ſhall be ſettled with the mother.

M. 3 *G.* 2. *St. Giles*'s and *St. Margaret*'s. *Sarah Etherington*, with *Dorothy* her daughter aged five years, was removed from *St. Margaret*'s to *St. Giles*'s, as being the place of *Sarah*'s laſt legal ſettlement before her marriage, ſhe having married an *Iriſhman* who had no ſettlement: And it was adjudged, that *Dorothy* her daughter ſhall be ſettled with her mother in the pariſh of *St. Giles*, where her ſaid mother's ſettlement was before marriage. *Fol.* 251.

T. 9 *G. K.* and *St. Paul's Shadwell.* Reſolved by *Eyre* and *Forteſcue*, that where the father being a foreigner had no ſettlement, the children ſhould have the benefit of their mother's ſettlement; for that her right ſhould deſcend to them, and they ſhould not be ſent to the place of their birth. *Seſſ. C. V.* 2. 113.

H. 10 *G. St. Giles*'s and *Everſley Blackwater.* It was held by the court, that where the father's ſettlement cannot be found, yet if the mother's can, the child ſhall have the benefit of that. *Seſſ. C. V.* 2. 112.

H. 28 *G.* 2. *St. John's Wapping* and *St. Botolph's Biſhopſgate.* A child of an *Iriſhman* having no ſettlement in *England*, and ſuppoſed to be on board a man of war in the *Weſt Indies*, and of his wife being an *Engliſhwoman*, was adjudged to go with the mother, to the mother's ſettlement which ſhe had before marriage.

9. A travelling woman, having a ſmall ſucking child upon her, was apprehended for felony, and ſent to the gaol, and was hanged: This child is to be ſent to the place of its birth, if it can be known; otherwiſe it muſt be ſent to the town where the mother was apprehended, becauſe that town ought not to have ſent the child to gaol, being no malefactor. *Read. Poor. Dalt.* 168. Father and mother both dead, and the child's ſettlement not known.

And where a child is firſt known to be, that pariſh muſt provide for it, till they find another. *Comb.* 364, 372.

v. Of ſettlement by apprenticeſhip.

The ſtatutes relating to the ſettlement of apprentices, are theſe following; which I will firſt exhibit together at one view, and then

then set forth the judgment of the court of king's bench upon the several clauses of the said statutes in their order.

Statutes concerning the settlement of apprentices.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint by the churchwardens or overseers, within* 40 *days after any person shall come to settle in any parish, on any tenement under* 10 l. *a year; two justices* (1 Q.) *may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of* 40 *days at the least.* By the 1 *J.* 2. *c.* 17. *The said* 40 *days shall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing.* And by the 3 *W. c.* 11. *Not from the time of delivering such notice, but from the time of the publication of such notice in the church.*

But by the said act of the 3 *W. If any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, tho' no such notice in writing be delivered and published.* s. 8.

By the 12 *An. st.* 1. *c.* 18. *If any person, after* June 24. 1713, *shall be an apprentice bound by indenture, to any person residing under a certificate, in any parish, township, or place, and not afterwards having gained a legal settlement in such parish, township, or place; such apprentice, by virtue of such apprenticeship, indenture, or binding, shall not gain any settlement in such parish, township, or place; but every such apprentice shall have his settlement in such parish, township, or place, as if he had not been bound apprentice.* s. 2.

And by the 9 & 10 W. c. 11. *No person who shall come into any parish by a certificate, shall be adjudged by any act whatsoever to gain a settlement in such parish, unless he shall* bona fide, *take a tenement of* 10 l. *a year, or execute an annual office in such parish.* (And consequently, not by apprenticeship.)

And by the 8 *An. c.* 9. and 9 *An. c.* 21. *The master shall pay duty of* 6 d. *a pound, for* 50 l. *or under, and of* 12 d. *a pound for every pound above, of money, or of things not money according to their value, given with apprentices, and proportionably for greater or lesser sums: Except money given with parish apprentices, or out of publick charities. The sum given, to be written in the indenture in words at length. And besides the stamps before requisite, the indentures to be moreover stamped with another stamp, denoting the* 6 d. *or* 12 d. *a pound respectively. And if the sums are not truly inserted, or duties not paid or tendred, or indentures not stamped or tendred to be stamped within the times limited; such indentures shall be void, and not available in any court or place, or to any purpose whatsoever.*

On complaint within 40 *days*] This statute of *C.* 2. gives power to remove persons within the space of 40 days after they come to reside, but no power to remove them after the said 40 days; and being unremovable, and legally settled is the same thing. The statutes of *J.* 2. and *W.* 3. do restrain such 40 days residence to be after notice in writing; but the latter clause of the statute of *W.* takes off that restriction with regard to apprentices; and the reason thereof is, because such notice would be to no purpose,

for

for that the juſtices cannot upon the complaint of the overſeers remove the apprentice from his maſter, that is to ſay, they cannot upon complaint of the overſeers make void the indenture between the maſter and his apprentice, by which the apprentice is bound to live with his maſter, and the maſter is bound to keep him; for this can only be done, upon the complaint of the maſter or apprentice: and continuing 40 days unremovable without notice, is the ſame thing, as continuing 40 days removable, but not removed, after notice; and conſequently the party hath gained a ſettlement. And it is poſſible that the apprentice may gain as many ſettlements, as there are ſpaces of 40 days in the term of his apprenticeſhip; and where he ſerves the laſt 40 days, there is his laſt ſettlement: Conſequently, he may gain a ſettlement long before his maſter ſhall gain one; as where his maſter's ſettlement ſhall ariſe from executing an annual office: Or, he may gain a ſettlement, whilſt his maſter ſhall gain none, as when he reſides upon a tenement under 10*l.* a year: And of conſequence, the maſter may be removed, when the apprentice cannot be removed; and in ſuch caſe the maſter ſhall be neceſſitated to apply to the juſtices, to compel the apprentice to go along with him.

This general opening of the ſtatute will make way for the ſeveral following reſolutions:

Apprentice ſettled, altho' the maſter have no ſettlement.

(1) *H.* 4 *An. St. Bride*'s and *St. Saviour*'s. A woman who was ſettled at *St. Saviour*'s, with her apprentice by indenture, came and took a lodging in *St. Bride*'s, and there continued above 40 days with her apprentice, who ſerved her there. This was held by the court, to be a ſettlement of the apprentice at *St. Bride*'s. 2 *Salk.* 533.

Apprentice ſerving another maſter, but not aſſigned.

(2) *M.* 8 *G.* 2. *K.* and *St. George Hanover Square. Alice Wheeler* was bound by indenture a pariſh apprentice, to *George Liſter*, in the pariſh of *St. George*, where ſhe lived above 40 days under the indenture, and gained a ſettlement: Afterwards, ſhe was by parol agreement hired out by the ſaid maſter to one *Hall* in the pariſh of *St. Mary le bone*, and there lived and lodged above 40 days, that is, for the ſpace of one year and upwards, the ſaid apprenticeſhip continuing; and the ſaid *George Liſter* her maſter received her wages, and found her cloaths: By the court, the apprentice is well ſettled in *St. Mary le bone*. Seſſ. C. V. 2. 138. Str. 1001.

E. 9 *G. St. Olave*'s and *All Hallows*. A perſon is bound apprentice to a maſter who lives in *St. Olave*'s: Afterwards, the apprentice by his maſter's conſent lives with another perſon in *All Hallows*. By the court; He gains a ſettlement in the laſt place; for a perſon may ſerve his maſter in another pariſh or place; and altho' he ſerves another man, yet it is by conſent of his maſter, and the benefit accrues to his maſter. *Caſes of S.* 153. *Str.* 554.

M. 3 *G.* Pariſhes of *Holy Trinity* and *Shoreditch*. *Parker* Ch. J. delivered the reſolution of the court. This is an order for the removal of one *Ferrer* from the pariſh of *Holy Trinity* to *Shoreditch*; by which it appears, that *Ferrer* was bound as an apprentice to one *Truby*, with intent that he ſhould ſerve *Green*; which he did for three years: And it hath been inſiſted, that he being bound

bound to *Truby*, who lives in *Trinity* parish, his settlement is there; and not in *Shoreditch*, where the service was. But we are of opinion the justices have done right in sending him to *Shoreditch*, where the service actually was. It is the same thing as if *Truby* had turned him over to *Green*; in which case there would have been no question, but he had gained a settlement in *Green*'s parish. *Str.* 10.

Apprentice hiring, the master being run away.

(3) *E.* 10 *G. Buckington* and *Shepton Beechamp.* The master ran away: The apprentice hired himself for a year, and served the year. By the court; He gained no settlement, not being *sui juris*, nor of a capacity to hire himself; otherwise, had it been by consent of his master, or had his indenture been cancelled. *Cases of S.* 155. L. *Raym.* 1352. *Str.* 582.

Note; In the *Cases of Settlements*, this case is reported under the name of *K.* and *Shipton Curry*; by L. *Raymond*, under the name of *Buckington* and *St. Michael Sebington*; by Sir *John Strange*, under the name of *Packington* and *Chepton Beecham.* None of all which seem to exhibit the true names of the contending parishes, for there are no such parishes as most of those here rehearsed; and therefore it is presumed to insert the real names of the parishes, which these appellations seem most probably to denote, namely, *Buckington* and *Shepton Beechamp.* And here it may be proper to observe once for all, the great inaccuracy in the names of places and persons, which every where occurs in the books of reports, arising (as it seemeth) from two causes: 1. From the reporter's taking down the name in court by the sound only, which oftentimes may cause a wide difference in the orthography. And, 2. From the hand writing of the reporter perhaps not being very legible; the case being taken down in a hurry of the pen, and not published but by others after the reporter's death. Where the matter is very notorious, liberty hath been taken throughout this book, to restore such broken words, to their genuine and known originals; so as to read instead of *Hedcome* or *Hedcorn*, *Hedcron*; for *Misserden*, *Missenden*; for *Trensham*, *Frensham*; for *Woodon*, *Woodend*; for *Yexford*, *Yokesford*; for *Eutoscater*, *Uttoxeter*; and many other such like.

Apprentice dismissed, but not discharged, hiring for a year.

(4) The son was bound apprentice to his father, who afterwards gave up the indentures of apprenticeship, but did not cancel them: Then the son was hired into another parish for a year, and served the year; and being likely to be chargeable, he was sent by an order to the parish where he lived as an apprentice; because, the indentures being not cancelled, he still continued an apprentice there. *Mod. Ca.* 190. *Dalt.* 180.

Apprentice assigned by the master.

(5) *E.* 9 *G. St. Olave* and *All Hallows.* If a master assigns over his apprentice, and the apprentice serves in pursuance of that assignment; he thereby gains a settlement: and it differs not whether he serves with one master or another; for he still serves by virtue of the first indenture. *Sess. C. V.* 1. 215.

13 *W. Castor* and *Aicles.* A poor child being bound at *Castor*, his master there assigned him over to another master, who lived in *Aicles.* And it was held, that the poor child should gain a settlement at *Aicles*, where his second master lived; for tho' the apprentice

prentice was not assignable, yet that assignment was not merely void, but amounted to a contract between the two masters, that the child should serve the latter. So that this assignment is good by way of covenant, tho' it be not an assignment to pass an interest. 1 *Salk.* 68.

Apprentice assigned by the master's widow.

(6) *T.* 12 *G.* 2. *K.* and *East Bridgeford.* Upon a special order it was stated, that an apprentice upon the death of his master, was with his own consent turned over by the widow (who had taken no administration) to another master, whom he served. And the court held it a good settlement in the last parish, within the reason of the case of *Holy Trinity* and *Shoreditch* abovementioned, where the apprentice was bound to one master, but served another all the while in another parish, and there gained a settlement. *Str.* 1115.

Apprentice settled, not removable.

(7) An apprentice well settled, being with a master removable, cannot be removed with him; but the master may complain on the covenant. *Cases of S.* 211.

Forty days residence successively not necessary.

May remove him to the place where he was last legally settled for the space of 40 *days at the least*] *H.* 10 *G. K.* and *Cirencester.* There was an apprentice bound in the parish, who lived there off and on for three quarters of a year. Exception was taken, that this was no settlement, since he might not inhabit 40 days together. But by the court, That is not necessary; and the order for making it a settlement was confirmed. *Str.* 579.

Infant pauper binding himself.

If any person shall be bound] *H.* 3 *G.* 2. *Newbury* and *St. Mary's* in *Reading.* A poor boy of 14, bound himself apprentice for 7 years to a weaver. It was argued, that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the whole court, It did gain him a settlement; for an infant may make an indenture for his own benefit. *Foley* 154. *Andr.* 373.

Binding for four years.

Shall be bound apprentice] *H.* 9 *G.* 2. *K.* and *St. Nicholas Ipswich.* There was an indenture of apprenticeship, for four years; which the apprentice served accordingly: whereas the statute of the 5 *El.* requires, that it shall not be for less than 7 years. And the question was, Whether this should gain a settlement? By the whole court; This indenture was not void, but only voidable; and none could avoid it but the parties: And neither of the parties having taken advantage thereof to avoid it, the apprentice having continued under the same above 40 days, did thereby gain a settlement. *Sess. C. V.* 2. 162. *Andr.* 365. *Str.* 1066.

Binding by indentu not indented.

By indenture] *T.* 5 & 6 *G.* 2. *K.* and *Mellingham.* A person was bound by indenture, tho' not actually indented; and the sessions adjudged the settlement on the foot of that binding. Exception was taken, that this was a binding without indenture, and not good; and also whatever the writing was, the pauper was no party to it, nor could be concluded by it: and a deed poll will not bind an infant, nor a poor person put out by the overseers without his own contracting, for the statutes which make such covenant binding upon them, do require that the binding be by indenture.

denture. And by the court; The exception muſt be allowed, and the order quaſhed. *Seſſ. C. V.* 1. 330.

Inhabitancy to be where the party lodges.

And inhabit in any town or pariſh] *M.* 11 *G. St. John Baptiſt* and *St. James's Biſhop Cannings.* Binding and ſerving will not make a ſettlement, but the ſettlement muſt be by inhabiting; which cannot be but where the party lodges. L. *Raym.* 1371. *Str.* 594.

E. 3 *G. K.* and *St. Olave's Jury.* An apprentice is bound to a cobler, who keeps a ſtall in one pariſh, lies in another, and the boy in a third; and the ſeſſions adjudge the ſettlement where the ſtall is, becauſe the ſervice was there. But by the court, The boy has gained no ſettlement in any of the three pariſhes; for the ſtall is not ſufficient to give him one, the maſter lying in another pariſh. And the order was quaſhed. *Str.* 51.

T. 3 *G. St. Mary Colechurch* and *Radcliffe.* A boy was bound apprentice to a ſeafaring man, and ſerved him for a quarter of a year in the day time on land, in the pariſh of *St. Mary Colechurch*, but lay every night on ſhipboard in *Radcliffe.* But the juſtices apprehending the ſettlement to be where the ſervice was, ſend him thither. It was moved to quaſh this order, and was likened to the aforeſaid caſe of the cobler. By *Parker* Ch. J. A man properly inhabits where he lies; as in the caſe where the houſe is in two leets, he is to be ſummoned to that in which his bed is. And the order was quaſhed. *Str.* 60. *Caſes of S.* 105. *Foley* 159.

Apprentice to a certificate perſon.

Apprentice—to a perſon reſiding under a certificate and not afterwards having gained a ſettlement] By theſe words it is evident, that if the maſter gains a ſettlement under his certificate, the apprentice is then at liberty to gain a ſettlement, as if the maſter had no certificate.

Such apprentice—ſhall not gain any ſettlement in ſuch pariſh, townſhip, or place] *M.* 14 *G.* 2. *Dunchurch* and *Petham.* An apprentice was bound to a certificate perſon, and aſſigned by him to a perſon that lived in another pariſh, and went and lived there accordingly; and the queſtion was, whether he gained any ſettlement under ſuch aſſignment and ſervice. By the court; The ſtatute has only regard to the pariſh where the certificate perſon reſideth, to prevent the apprentices of ſuch perſons gaining ſettlements there; and whether the binding was to a certificate perſon or not, is not material as to a third pariſh: and adjudged, that the apprentice gained a ſettlement. *Seſſ. C. V.* 2 149. *Str.* 1147.

T. 13 *G.* 2. *K.* and *Eaſt Bridgeport.* A perſon was bound in one pariſh, his maſter dies, and he is aſſigned to a certificate man in another pariſh, and is afterwards aſſigned over by him to a third perſon who was not a certificate man; and the queſtion was, whether he could gain a ſettlement under this laſt aſſignment: And it was held clearly that he could. *Neſ. Poor.*—And this third maſter might poſſibly inhabit in the ſame pariſh in which the certificate perſon lived; and the reaſon is, becauſe the apprentice in ſuch caſe is not looked upon as the apprentice of the certificate perſon, but of the executor of the firſt maſter, who was no certificate perſon.

No person who shall come into any parish by a certificate, shall be adjudged by any act whatsoever to gain a settlement — unless he shall take a tenement of 10*l. a year, or execute an annual office*] *H.* 6 *G. Ivinghoe* and *Stonebridge*. Upon a special order of sessions, the case was stated for the opinion of the court; that one *Richard Plowver* was bound apprentice to *John Emerton*, who was legally settled in *Ivinghoe*; that he served part of his time there, and then the master went with all his family as a certificate man to *Stonebridge*, where he purchased an estate of the value of 60 *l.* and after such purchase the apprentice lived with him six months till the apprenticeship expired; and because the statute provides, that the apprentice of a certificate man shall gain no settlement in the parish to which the master goes by certificate, therefore the justices adjudge the settlement at *Ivinghoe*, where the binding and great part of the service was. But by the court, We think the settlement is in *Stonebridge*; for according to the case of *Burclear* and *Eastwoodhay*, *E.* 5 *G.* when a certificate man makes a purchase, he immediately ceaseth to be there in nature of a certificate man, and becomes a settled inhabitant: and in this case here is service for six months, as an apprentice, in a parish where the master was legally settled, which is more than sufficient to give a settlement to the apprentice. *Str.* 265.

Indenture not stamped.

Not available in any court or place, or to any purpose whatsoever] *H.* 4 *G.* 2. *Cureden* and *Leiland*. Upon a special order of settlement, it was stated, that a poor boy was bound out apprentice by indenture, and the master had 20 *s.* paid him; that he served three years; but that the master never paid the duty of 6 *d.* in the pound according to the 8 *An. c.* 9. *s.* 39. which says, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to *Fortescue* J. who went the circuit: And he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained; and it should not be in the power of the master to defeat it by matter *ex post facto*. And pursuant to this opinion, the sessions held it a settlement. But upon debate in the king's bench, the order was quashed; for they said, it was making the indenture good to one purpose, when the act of parliament had made it void to all intents and purposes whatsoever. And though it was a hard case, they could not break through the positive words of the act. *Str.* 903. *Sess. C. V.* 2. 134. *Andr.* 364.

vi. Of settlement by service.

In like manner as under the last head, I will first set down the whole law relating to the subject before us, and then the adjudged cases upon the several branches thereof.

Statutes concerning settlement by service.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint by the churchwardens or overseers, within* 40 *days after any person shall come to settle on*

any tenement under 10 l. *a year, two juſtices* (1 Q.) *may remove him to the place where he was laſt legally ſettled either as a native, houſholder, ſojourner, apprentice, or ſervant, for the ſpace of* 40 *days at the leaſt.*

But by the 1 J. 2. c. 17. *The forty days continuance ſhall not make a ſettlement, but from the time of delivering notice in writing.*

And by the 3 W. c. 11. *From the publication of ſuch notice in the church.*

But by another clauſe in the ſaid act of the 3 W. *If any unmarried perſon, not having child or children, ſhall be lawfully hired into any pariſh or town for one year; ſuch ſervice ſhall be adjudged and deemed a good ſettlement therein, tho' no ſuch notice in writing be delivered and publiſhed.*

And by the 8 & 9 W. c. 30. *Whereas ſome doubts have ariſen, touching the ſettlement of unmarried perſons, not having child or children, lawfully hired into any pariſh or town for one year, it is enacted and declared, that no ſuch perſon ſo hired as aforeſaid, ſhall be adjudged or deemed to have a good ſettlement in any ſuch pariſh or townſhip, unleſs ſuch perſon ſhall continue and abide in the ſame ſervice during the ſpace of one whole year.*

By the 12 An. ſt. 1. c. 18. *If any perſon after* June 24. 1713. *ſhall be a hired ſervant with any perſon, who did come into, or ſhall reſide in any pariſh, townſhip, or place, by means or licence of a certificate, and not afterwards having gained a legal ſettlement in ſuch pariſh, townſhip, or place, ſuch ſervant ſhall not gain any ſettlement in ſuch pariſh, townſhip, or place, by reaſon of ſuch hiring or ſervice, but ſhall have his ſettlement as if he had not been an hired ſervant to ſuch perſon.* ſ. 2.

And by the 9 & 10 W. c. 11. *No perſon who ſhall come into any pariſh by a certificate ſhall be adjudged by any act whatſoever, to have procured a legal ſettlement in ſuch pariſh, unleſs he ſhall* bona fide *take a leaſe of a tenement of* 10 l. *a year, or ſhall execute an annual office in ſuch pariſh: (And conſequently ſhall gain no ſettlement by ſervice.)*

General expoſition of hiring and ſervice.

On complaint within 40 *days*] By the ſtatute of *C.* 2. perſons became ſettled, if not removed in 40 days. But whereas people came privately into pariſhes, and continued perhaps 40 days, before they were publickly known to be there; therefore the ſtatute of the 1 *J.* 2. did provide, that ſuch 40 days ſhould not gain a ſettlement, but after the time of delivering notice in writing to the overſeers, that ſuch perſon was come to inhabit in ſuch pariſh. And whereas in that caſe, the overſeer to whom ſuch notice ſhould be delivered, either thro' ignorance or wilfulneſs, might conceal ſuch notice from the inhabitants; therefore the 3 *W.* did provide, that ſuch 40 days ſhould be accounted from the time of the publication of ſuch notice in the church, and not otherwiſe. But then by the ſubſequent clauſe of the ſtatute of the 3 *W.* it is enacted, that *if any unmarried perſon, not having child or children, ſhall be lawfully hired into any pariſh or town for one year, ſuch ſervice ſhall be adjudged a good ſettlement therein, tho' no ſuch notice*

notice in writing be delivered and publiſhed: And the reaſon thereof is this, becauſe that ſuch notice would not avail; for that the juſtices, upon complaint of the overſeers, who are no parties to the contract, cannot make void the contract between the maſter and ſervant, by which the ſervant is bound to continue with his maſter, if he requires it. And therefore upon this act, if the ſervant was hired for a year, and ſerved 40 days under that hiring, he was not removable, and gained a ſettlement; and ſo in every place where he ſerved 40 days under ſuch hiring, he there gained a ſettlement; and where he ſerved the laſt 40 days, there was his laſt ſettlement. But this eaſy method of acquiring ſettlements, cauſing ſervants to become inſolent, at laſt the ſtatute of the 8 & 9 *W.* was made, which enacteth, that *no ſuch perſon ſo lawfully hired into any pariſh or townſhip ſhall be adjudged to have a good ſettlement there, unleſs he ſhall continue in the ſame ſervice during the ſpace of one whole year.* But if he ſhall continue in ſuch ſervice during the ſpace of one whole year, his ſettlement in all other reſpects ſhall be as before; that is to ſay, every continuance of 40 days unremovable during ſuch ſervice for the year ſhall be deemed a ſettlement; and where he continues the laſt 40 days, there is his laſt ſettlement. But there hath been much doubting, what ſhall be deemed a hiring for a year, and alſo what ſhall be deemed a ſervice for a year, within the ſenſe of theſe ſtatutes; and what relation ſuch hiring and ſervice ſhall bear to each other: The arguments for and againſt which on each ſide, in the adjudged caſes hereafter following, will be the better underſtood, from this ſhort hiſtorical account which hath been given, of the progreſs of the law relating to this matter.

Two juſtices (1 Q.) *may remove him*] But it hath been obſerved before, that the juſtices, upon the complaint of the pariſh officers, cannot remove the ſervant from his maſter; becauſe they cannot upon ſuch complaint diſſolve the contract betwixt the maſter and his ſervant, to which contract the officers are no parties; for that can only be done upon the complaint of the maſter or ſervant. Therefore if a maid ſervant ſhall happen to be with child, which child is likely to be born a baſtard; yet if her maſter is willing to keep her, the pariſh cannot remove her; but the maſter, if he pleaſes, may complain to a juſtice of the peace, that ſhe is leſs able to perform the ſervice, and the juſtice may diſcharge her, and then the pariſh by order of two juſtices may remove her. Whether the ſervant may be removed from the maſter.

But altho' regularly the ſervant cannot be removed from the maſter, yet the maſter may be removed from the ſervant; as if the ſervant hath gained a ſettlement in the pariſh, and the maſter hath gained none, which may often happen, the ſettlement of the ſervant no way depending upon the ſettlement of the maſter: In ſuch caſe, if the pariſh will remove the maſter, they cannot remove the ſervant; but the maſter may complain to the juſtices, who may compel the ſervant to go along with him.

If any unmarried perſon, not having child or children] Here are two points conſiderable; one is, where a widower has a child, which hath gained a ſettlement of its own, diſtinct from the Unmarried perſon.

father's ſettlement; the other is, when a perſon unmarried is hired, and marries before the year's ſervice is compleated.

Unmarried perſon having a child ſettled elſewhere.

(1) *E.* 10 *An. Antony* and *Cardigan.* A man having a daughter, which daughter was married and ſettled elſewhere, hired himſelf for a year, and ſerved the year: By the court, he is a ſingle perſon within the meaning of the act, tho' not expreſly within the letter of it. The meaning of the ſtatute was, that he might not bring any conſequential damage to the pariſh, which he cannot poſſibly do here. And they held that the man, notwithſtanding he had a child, gained a ſettlement by virtue of that ſervice. *Caſes of S.* 7. *Foley* 131.

Servant marrying during the ſervice.

(2) *E.* 1 *An. Faringdon* and *Witty.* A ſervant hired for a year, ſerved half a year of the time, and married. The queſtion was, Whether the juſtices, on complaint of the overſeers, could make an order to remove him to the place of his laſt legal ſettlement? By the court, The contract between the maſter and ſervant was not diſſolved by the marriage; and admitting it might be diſſolved by an order made on complaint of the maſter, yet without that, and upon complaint of the officers only, it could not be diſſolved. And the marriage doth not hinder the ſervice; the contract continues; and if the man performs his ſervice, he gains a ſettlement. 2 *Salk.* 527.

The ſame reſolved, *M.* 1 *G.* 2. *K.* and *Sutton. Seſſ. C. V.* 2. 121.

And the reaſon hercof perhaps might be this; The ſtatute of the 3 *W.* ſays, if ſuch unmarried perſon ſhall be hired for a year, *ſuch ſervice* ſhall gain a ſettlement; that is, a ſervice for forty days: and the latter ſtatute doth not cauſe this 40 days ſervice to be no ſettlement, but only ſuſpends the ſame, until it ſhall appear, whether the party ſhall ſerve out his year; and if he doth ſerve out the year, then ſuch 40 days ſervice is a good ſettlement. So that in this caſe, it may ſeem, that the ſettlement in effect was obtained before the marriage. It doth not appear what would have been the event, if the ſervant had married before he had ſerved 40 days. If he ſhould be deemed in ſuch caſe to have gained no ſettlement, then it will follow, that a ſervant marrying, after he hath ſerved a conſiderable part of the year, ſhall be ſettled where he ſerved the laſt 40 days before ſuch marriage, provided he ſerves out the year. But concerning this, there hath been no adjudication.

But ſince it is evident from the caſes abovementioned, that ſuch marriage will not regularly hinder the ſervant's ſettlement, if the pariſh would be rid of him, it muſt be upon complaint of the maſter to a juſtice of the peace, that by ſuch marriage he is become leſs fit for his ſervice; and if the juſtice ſhall ſee cauſe to diſcharge him, he may after ſuch diſcharge be removed by order of two juſtices to his place of ſettlement.

But there is one caſe, wherein ſuch marriage of it ſelf will defeat the ſervice, and conſequently the ſettlement thereby; and that is, where the maid ſervant is married to her maſter, or the man ſervant marries his miſtreſs: for there the contract of ſervice is determined by the parties themſelves.

Shall

Shall be lawfully hired into any pariſh or town for one year] Theſe words do introduce one great ſubject of debate, namely, What ſhall be deemed a ſufficient *hiring for a year* within theſe ſtatutes, by virtue whereof a perſon ſhall be intitled to gain a ſettlement? Concerning which it hath been reſolved as follows: Whether the hiring for a year ſhall be by one intire contract.

H. 10 *W. Bayly*'s caſe. A maid ſervant contracted to ſerve from *Lady-day* till *Michaelmas* following; which ſhe did accordingly: and then made a new contract with the ſame maſter, to ſerve him for a longer time; and accordingly did ſerve him upon that contract, till *April* following; in all, above a year. And by the court, Tho' this was not an intire contract for a year, yet it gained her a ſettlement. 3 *Salk.* 257.

On the contrary, in the caſe of *Horſham* and *Shipley*, *M.* 12 *An.* A perſon was hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and ſo on again another year: The queſtion was, whether this gained a ſettlement? And the court were opinion, it did not; for they ſaid the hiring muſt be for a year. *Foley* 134.

And more expreſly, in the caſe of *Dunſfold* and *Ridgwick*, *M.* 9 *An.* A perſon was hired for half a year, and after that was hired again for another half year, with the ſame perſon, and thereupon ſerved a year in one continued intire ſervice, but by ſeveral hirings. By the court; It ought to be one intire contract, and one intire ſervice; the one is required by the ſtatute, as well as the other. If a ſervice under ſeveral contracts ſhall gain a ſettlement, one that ſerves by the month, by the week, or by the day, may, if he continues a year, gain a ſettlement. One may hire by the day, for charity; but there is danger of being chargeable in hiring ſuch a perſon by the year. For ſuch a term as a year, it is not ſuppoſed a maſter would hire one, unleſs able of body, and ſo a perſon not likely to become chargeable. 2 *Salk.* 535.

Perhaps it may add ſome weight to the ſcale in favour of this latter opinion, if we attend to the following obſervation; namely, That altho' the *ſervice* for a year depends upon the ſtatute of the 8 & 9 *W.* which makes ſuch ſervice neceſſary to gain a ſettlement, yet the *hiring* for a year depends ſolely upon the ſtatute of the 3 *W.* upon which ſtatute the law was this, that if a perſon was hired for a year, and ſerved 40 days, he gained a ſettlement. But no one will ſay, that if he was hired for half a year, and ſerved forty days, he ſhould thereby gain a ſettlement; for that is againſt the ſtatute. And the 8 & 9 *W.* hath made no alteration at all as to the hiring, but only lengthened the time of the ſervice.

Moreover, the word *lawfully* ſeems to be of ſome conſideration. The ſtatute ſays, if ſuch perſon *ſhall be lawfully hired for one year*; and the following ſtatute, reciting the *lawful hiring*, ſays, if ſuch perſon *ſhall be ſo hired as aforeſaid*: Now what is a *lawful* hiring? Not a hiring for half a year; for that is by virtue of no law. On the contrary, Lord *Coke* (1 *Inſt.* 42.) ſays, if a man retain a ſervant generally, without expreſſing any time, the law ſhall conſtrue it to be for one year, for that retainer is according to law. The ſtatute of the 5 *El.* ſays, that no ſervant, as

therein mentioned, ſhall be hired *by any means or colour for leſs time than one whole year*. The ſtatute of the 2 & 3 *P. & M.* concerning the highways, ſays, that all perſons *not being hired ſervants by the year* ſhall be liable to work at the highways. The ſtatute of the 20 *G.* 2. ſays, that if a ſervant *hired by the year* ſhall complain to a juſtice upon the retainer, he may be relieved. And in general, the law never looks upon any perſon as a *ſervant*, who is hired for a leſs term than one whole year; otherwiſe they come under the denomination of *labourers*. Now being *lawfully* hired, can mean nothing elſe, but being hired *according to law*. And being hired *according to law*, is the being hired *for one whole year*, and not otherwiſe.

Concerning this hiring for a year, theſe other reſolutions have been made: *viz.*

Hiring for eleven months.

(1) *T.* 3 *G. Ranton* and *Haughton*. Order ſpecially ſtated: *John Evans* was hired with *Ralph Trubſhaw* of *Haughton*, from *Aſh-Wedneſday* till *Chriſtmas*, and ſerved him that time. Then he went away from him, and ſtaid with his father in *Ranton*, for about a week. Then he returned to the ſaid *Ralph Trubſhaw*, and was again hired with him for 11 months, and ſerved him the ſaid 11 months: Then departed from the ſaid *Ralph Trubſhaw*, and took his cloaths with him, and was abſent one week. Then he returned to the ſaid *Ralph Trubſhaw*, and was hired with him for eleven months, and accordingly ſerved him; and then left that ſervice, and went to his father in *Ranton*, and ſtayed about one week. Then the ſaid *John Evans* ſerved one *John Sutton* of *Haughton* aforeſaid for about 3 weeks; then returned to *Ranton* aforeſaid, and ſtayed for about a week: and then returned to the ſaid *John Sutton*, and hired with him for 11 months, and ſerved within a fortnight or 3 weeks of the laſt 11 months, where, by agreement with the ſaid *John Sutton*, to avoid a ſettlement in the pariſh of *Haughton* aforeſaid, he left him, took his cloaths, and went into the pariſh of *Gnoſall*, and there continued about a week; then returned to the ſaid *John Sutton*, and continued with him ſo long as to make up his ſervice of the laſt 11 months; and 3 weeks before *Chriſtmas*, the ſaid *John Evans* hired himſelf again to the ſaid *John Sutton*, for another 11 months, and ſerved him from that time, till within 3 weeks of *Michaelmas* following, and then came away and married. The queſtion was, Whether theſe ſeveral hirings were ſufficient to gain a ſettlement in the pariſh of *Haughton*? *Parker* Ch. J. ſaid, this was an apparent fraud, and different from all the other caſes. *Pratt* J. ſaid, I doubt we muſt take the law to be, that there muſt be a hiring for a year, and a ſervice for a year: Here the ſeſſions have found it ſpecially, and there is neither hiring nor ſervice for a year: And ſuppoſe a man that lives in a pariſh incumbred with poor, hires a ſervant for 11 months only, to prevent his gaining a ſettlement, how can this hiring and ſervice gain a ſettlement? And as to the fraud, if there is any, the juſtices of the peace are judges of that. *Eyre* J. was of the ſame opinion with *Pratt* J. *Powys* J. being abſent. Afterwards, in *Eaſter* term, after long debate and conſideration, the opinion of all the court was, That theſe hirings and ſervice in the

pariſh

pariſh of *Haughton* were not ſufficient to gain a ſettlement. *Fol.* 137. *Str.* 83.

(2) *E.* 5 *G.* 2. *K.* and *South Cerney.* At *Northleach* are annually held two meetings for the hiring of ſervants, the one on the *Wedneſday* before *Michaelmas*, the other on the *Wedneſday* after. The pauper was hired the *Wedneſday* after *Michaelmas*, to ſerve to *Michaelmas* following; which he did. It was urged, that this being a hiring according to the courſe and cuſtom of the country, was a ſufficient ſettlement. But by the court; This is no ſettlement upon the face of it; there muſt be a hiring for a year, and that cannot be diſpenſed with. *Seſſ. C. V.* 1. 156. Hiring a few days after Michaelmas to Michaelmas.

H. 5 *G. Combe* and *Weſtwoodhay. Michaelmas-day* was on *Thurſday*; and a perſon was hired upon the *Saturday* following, to ſerve till *Michaelmas:* And it was held to be inſufficient to gain a ſettlement, being not a hiring for a year. *Str.* 143.

(3) *M.* 1 *G. Peperharow* and *Frenſham.* A perſon is hired the third of *October* to ſerve till *Michaelmas* following, and at *Michaelmas* the maſter ſays, ſtay two or three days, and I will pay you. Adjudged a ſettlement, becauſe fraudulent; and if this were allowed, there would be no ſuch a thing as a ſettlement; for every perſon would hire a ſervant two or three days after the quarter day, purely to evade the ſtatute. *Caſes of S.* 80. *Lu. Ca. in L. & E.* 293. Hiring for 2 or 3 days ſhort.

(4) *T.* 13 *An. Jeſſop* and *Miſſenden. Sarah Barnes* lived with her father for a year as a hired ſervant, in a little cottage upon the waſte, for 10*s.* a year, beſides what ſhe could get by her ſervice and labour. And whether ſhe gained a ſettlement thereby, was the queſtion. And the whole court held ſhe did; there is no ground of fraud; for it was to live with her father, who might be grown old. *Fol.* 142. Hiring with one's father.

(5) *T.* 13 *G.* 2. *King's Norton* and *Campden.* Order ſpecially ſtated. *Mary Calcut* was hired for a year, to ſpin yarn at 18*d.* a ſtone; and was to provide herſelf with victuals and lodging. She ſpun the whole year, and boarded and lodged at her maſter's, allowing 2*s.* a week for the ſame: but upon her examination ſhe ſaid, that by her contract ſhe thought her ſelf at liberty to play or be abſent from her work as long as ſhe pleaſed, only that ſhe was not at liberty to work for any other maſter. By the court, This caſe hath all the requiſites of the ſtatute, and is a good ſettlement: for in fact here is a hiring and ſervice for a year; and what her apprehenſion was, or whether ſhe was paid by the year or by the quantity of her work, was immaterial. *Str.* 1139. *Seſſ. C. V.* 2. 146. Hiring to ſpin at ſo much a ſtone.

(6) *T.* 6 *G.* 2. *Lidney* and *Streude.* Upon a ſpecial order of ſeſſions, it was ſtated, that a maid was hired for a quarter of a year, and if ſhe and her maſter liked one another, ſhe was to continue the whole year, and have 3*l.* for her year's wages; that ſhe ſtaid the year out, and had her 3*l.* And this on debate was held to be a ſettlement. *Str.* 950. Hiring conditionally.

H. 8 *G.* 2. *Chipping Wycombe* and *New Windſor.* A perſon was hired to go a month on liking, at 5*l.* a year wages, but to part on a month's wages, or a month's warning on either ſide; and

and continued under this agreement above a year in this service, and the wages were paid quarterly. And adjudged a good settlement. *Seſſ. C. V.* 2. 163.

H. 16 *G.* 2. *Atherton* and *Barton.* A perſon hires himſelf for a year at 4 *l.* wages, and either maſter or ſervant to be at liberty to determine the contract at the end of any quarter, upon a month's notice And it is ſtated, that he ſerved the year out, but that at the time of the hiring the ſervant declared, he made the agreement in that manner, to prevent loſing his former ſettlement. And upon this caſe, the two juſtices and ſeſſions held it no ſettlement. But the court on debate quaſhed both the orders; for this is the common ſort of hiring for a year, with an intention to ſtay together (as in fact they did); and if this ſhould be determined not to gain a ſettlement, it would overturn great numbers of ſettlements that ſubſiſt on ſuch hirings. *Str.* 1182.

Hiring by implication.

(7) *E.* 13 *G.* 2. *Wandſworth* and *Putney.* A boy came to live with Mr. *Falkner* without any hiring; and then his maſter told him, that if he ſtayed a year and behaved well, he would give him a livery and wages the next year. He lived there one year and four months, and received a guinea and a half wages. The court inclined to think, that this was a conditional hiring, and that the boy's ſervice was an aſſent in fact, and that it gained a ſettlement; but referred the matter back to the ſeſſions to be more fully ſtated. *Seſſ. C. V.* 2. 188.

Service where no contract did appear.

(8) *M.* 13 *G.* A young woman lived with her grandmother for four years, on an allowance of meat, drink, waſhing, and lodging. But there appearing no contract betwixt the grandmother and the girl, but that ſhe might have left the grandmother at any time; it was adjudged not a hiring within the ſtatute. *Seſſ. C. V.* 2. 120.

What ſhall be deemed a ſervice for a year.

Unleſs ſuch perſon ſhall continue and abide in the ſame ſervice] What ſhall be deemed the *ſame ſervice* within the meaning of this explanatory ſtatute, hath been much controverted. Concerning which there have been the following reſolutions:

Hiring for a year, and ſervice for a year, but not under the ſame hiring.

(1) Within about a year after this ſtatute of the 8 & 9 *W.* was made, was the following adjudication; *H.* 10 *W.* Caſe of the inhabitants of *South Micalton.* A maid ſervant was hired for half a year; which time ſhe ſerved: and then for another year, and ſerved half of that *Rokeby*, *Turton*, and *Gold* (*Holt* Ch J. being abſent) held it to be a ſettlement; becauſe the ſtatute deſigned only that the party ſhould ſerve a year. L. *Raym.* 426.

Another caſe in the ſame term is cited by Mr. *Blackerby* and others, under the name of *Stephenton* and *Overton*, where there was a hiring and ſervice from *Lady day* to *Michaelmas*, and then a hiring for a year from *Michaelmas* to *Michaelmas*, and a ſervice for half that year; and it was adjudged a good ſettlement. But whether the Chief Juſtice in this caſe was preſent in court, or whether this is the ſame caſe with the former, under a different name (which ſometimes happeneth in the books of reports) doth not appear. Which is only obſerved in this place, for that no other caſe hath occurred, wherein this point came in queſtion during

ring the time of Lord Ch. J. *Holt*, whoſe opinion controuls a very great number of caſes about ſettlements, the laws having been made, and the doubts thereupon having happened in his time.

The next caſe wherein the like was adjudged, was in the time of L. Ch. J. *Parker*, *viz.* that of *Brightwell* and *Weſthallam*. *E.* 1 *G.* There was a hiring and ſervice from 3 weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year, and ſervice for 11 months. The Ch. J ſaid, If there was a ſervice for a year, on a hiring from week to week, and then a hiring for a year, and ſerving for 40 days, that he ſhould adjudge that a ſettlement. The reaſon is, becauſe till the laſt ſtatute was made, an hiring for a year, and 40 days ſervice made a ſettlement; in regard that the hiring for a year ſhewed that the perſon was not likely to become chargeable, for that he was able to work. So 40 days is a good ſettlement to an apprentice, in reſpect of his ſkill and art, by which he is ſuppoſed unlikely to become chargeable. So a perſon that has paid pariſh dues, or ſerved offices in a pariſh, gains a ſettlement by 40 days, becauſe he is ſuppoſed a perſon of ſubſtance, unlikely to become chargeable. But the late act requiring ſervice for a year, as well as an hiring, we think it ſufficient if the words be anſwered, conſidering this with the deſign of the former ſtatutes. *Seſſ. C. V.* 1. 87. *Foley* 143.

On the other hand, in the caſe of *Dunsford* and *Rudgwick*, *M.* 9 *An.* in the firſt year of Lord Ch. J. *Parker*, Mr. *Foley* ſays, the court declared, that there ought to be one intire contract, and one intire ſervice for a year, purſuant to that contract. *Foley* 133.

And Mr. *Blackerby*, in reciting that caſe, ſays, it was then held, that there muſt be one intire hiring, and one intire ſervice in purſuance of ſuch hiring, for a whole year, that muſt make a ſettlement. *Black.* 244.

But it muſt be obſerved, that this was not properly the point in queſtion; for the queſtion there was, whether a hiring for two half years ſhould be deemed a ſufficient hiring, and not what ſhould be a ſufficient ſervice under ſuch hiring

We proceed therefore to the caſe of *K.* and *Aynhoe*, *M.* 1 *G.* 2. A perſon was hired for a quarter of a year, and ſerved that term; then he was hired for a whole year, and ſerved three quarters. And this was adjudged a ſettlement. There was cited for it, *Brightwell* and *Weſthallam*, *Overton* and *Stephenton*. Lord Ch. J. *Raymond* ſaid, the caſe of *Weſthallam* was expreſs to the point, and he would not break into it; but if it had been *res integra*, or a caſe not adjudged before, he ſhould have thought it ill. Here the ſervice was made previous to the hiring for a year. The greater part of the judges thought this caſe to be againſt the ſtatute, but that they were more ſtrongly bound by the precedent; and were unwilling to ſet aſide a reſolution ſolemnly adjudged, tho' not according to their own opinion. *Seſſ. C. V.* 2. 119. *Fol.* 144.

And this being ſettled, there followed the caſes of *Hanmer* and *Elleſmere*, *M.* 4 *G.* 2. *Eardiſland* and *Lempſter*, *H.* 6 *G.* 2. *Fyfield Magdalen* and *Wiſtower*, *M.* 11 *G.* 2. wherein a hiring and ſervice

ſervice for part of a year, and then a hiring for a year, and ſervice for ſo much of that year as made up a year's ſervice in the whole, were adjudged ſufficient ſettlements.

But whatever may be the rule in the court of king's bench, where the matter ſeems now to be ſettled in a good meaſure, upon the authority of *Brightwell* and *Weſthallam* as above mentioned; it is certain the point is far from being ſettled among the juſtices in the ſeveral counties. And in truth, the reaſons on the one hand may to many perſons ſeem as ſtrong, as the reaſons on the other. For it is certain, there can be no lawful ſervice, but under a lawful hiring; and if there can be no lawful hiring but for one entire year, it ſhould ſeem that there can be no lawful ſervice but for one entire year, purſuant to ſuch lawful hiring. And the caſe of *Brightwell* and *Weſthallam* ſeems to proceed upon a ſuppoſition, that nothing more is required by the ſtatute, but *hiring for a year and ſervice for a year*; whereas the words of the ſtatute are, that the party ſhall be *hired for a year*, and ſhall continue and abide in the *ſame ſervice* during the ſpace of one whole year: and it doth not ſeem very evident, how with any propriety of language, part of one ſervice and part of another ſervice can be called the *ſame ſervice*: And it ſeems a little abſurd, as Lord *Raymond* obſerved in the caſe of *Aynhoe* abovementioned, that the ſervice ſhould begin before the hiring; for upon the former ſtatute, of the 3 *W.* the law was not, if a man ſhould firſt ſerve for ſome certain time, and afterwards be hired for a year, and under ſuch hiring ſhould ſerve ſo long as would make up the former ſervice to forty days in the whole, he ſhould thereby gain a ſettlement, no more than if an apprentice had been bound and ſerved only 20 days under the indenture, he ſhould have become ſettled thereupon, by adding 20 days which he had ſerved before the binding, to the 20 days which he had ſerved after: But the ſtatute of the 3 *W.* required firſt a hiring for a year, and then a ſervice for 40 days under that hiring: and this ſtatute of the 8 & 9 *W.* makes no alteration therein at all, but only by enacting that the ſaid 40 days reſidence ſhall not gain a ſettlement, unleſs the party ſhall continue in the *ſame ſervice* for the ſpace of one whole year ——— Not to mention, that for any thing which appears in the caſes as above recited, the authority of *Brightwell* and *Weſthallam* became eſtabliſhed, not ſo much from the inconteſtable evidence of the thing it ſelf, as from the unwillingneſs of the court to unſettle a point once ſolemnly eſtabliſhed, in order that things may at length come to a certainty. But as in fact the caſe is very far from being ſettled among the juſtices in the country, it would ſpare much trouble in removals and appeals, if the parliament by another explanatory law would finally declare, what ſhall be deemed a lawful hiring, and what ſhall be deemed a lawful ſervice, ſo as to gain a ſettlement.

Same ſervice, but not with the ſame maſter.

(z) *E.* 4 *G. Ivingoe* and *Soldbury*. A perſon was hired for a year to one *Knight*, who rented a farm in *Ivingoe*, and lived with him half a year: The maſter lets the farm to one *Smith*, and the ſervant lives the reſidue of the year with *Smith* in the farm,

farm, without any words paſſed about diſſolving the contract with *Knight*, or making any new contract with *Smith*. And at the end of the year, the ſecond maſter paid him his wages. The queſtion was, if this ſhall be deemed the *ſame ſervice*, ſo as to gain a ſettlement. By *Pratt* Ch. J. and the court; This is a good ſettlement: If a maſter command his ſervant to live with another for a certain time, it is a ſervice to the firſt maſter; and here being no new contract, it is carrying on the ſervice of the firſt maſter. And the ſubſequent maſter paying his wages, did not alter the caſe; for the contract not being deſtroyed, he might have brought an action againſt the firſt maſter. *Seſſ. C. V.* 1. 121. *Caſ. of S.* 109. *Str.* 90.

E. 17 *G.* 2. *Beckles* and *Leonſtoff*. A perſon was hired to a blackſmith for a year, at 3 *l.* a year. During the year, the maſter gave him leave to work with another ſmith for three days, with another for a week, and with a third for a fortnight, and agreed the ſervant ſhould have the advantage of it; after which he returned and ſtaid out the year, and the maſter by his conſent deducted the proportion of wages for the time he was away: And upon this ſtate of the caſe, the ſeſſions held no ſettlement was gained, the firſt contract being diſſolved. But by the court, The order muſt be quaſhed, for this is not a diſſolution of the contract, but a licence to be abſent; and both parties conſidered it ſo, by continuing together to the end of the year. *Str.* 1207.

E. 15 *G.* 2. *Ladock* and *St. Enodr.* A perſon was hired for a year, and ſerved half a year; when the maſter died: the executor who lived in another pariſh, aſked the ſervant if ſhe would ſerve out the year with him: ſhe did ſo. And now, on the authority of the caſe of *Iwinghoe*, the court held it a ſettlement in the executor's pariſh; for the laſt ſervice is not to be conſidered as a new agreement, but a continuation of the firſt. *Str.* 1164.

(3) *E.* 11 *G. K.* and *Whitechappel.* A perſon was hired for 5 years, to work at a glaſs-houſe in *Whitechappel*, at the rate of 10*s.* a week; but never lodged with his maſter in the houſe any part of the time, but at another houſe in the pariſh: By the court, he has gained a ſettlement there; for being hired to ſerve above a year, and having ſerved and reſided in the ſame pariſh purſuant to ſuch hiring, he hath fully complied with the ſtatute, and it is not material where he lodged, ſo that it were within the pariſh. *Seſſ. C. V.* 2. 114. *Foley* 146. Same ſervice, but not in the ſame place.

T. 12 *An. Silverton* and *Aſhton.* A ſervant maid was hired for a year in the pariſh of *Aſhton*, where ſhe ſerved half a year; then her maſter, and ſhe with him, removed to the pariſh of *Patſhall*, where her maſter took another farm; the ſervant continued with him in the pariſh of *Patſhall* for the other half year: And the queſtion was, whether ſhe gained any ſettlement in either of theſe places; and if ſhe did, in which of them? By the court; Here is what the act requires, a hiring for a year, and a ſervice for a year. For it is the ſame ſervice; and the ſtatute doth not tie it down to one place. If a perſon is hired to a maſter in one pariſh, and goes with him into another pariſh, and ſerves him for

one whole year; the pariſh he continues laſt in for 40 days before the end of his year, is the place of his ſettlement: and the reaſon why the 40 days gains a ſettlement is, becauſe he comes there with his maſter, and you cannot remove him from his maſter, and having continued with him 40 days unremovable, he gains a ſettlement. *Foley* 188. *Caſ. of S.* 23.

T. 8 *G. St. Peter*'s in *Oxford* and *Chipping Wycombe.* Upon a ſpecial order of ſeſſions it appeared, that the maſter of the *Oxford* ſtage coaches hired a ſervant for a year, to ſtay in an inn in *Wycombe* where the coach baited, and to take care of the horſes: he lived there for the whole year, and the maſter all the while lived in *Oxford.* The queſtion was, Where that ſervant gains a ſettlement, or whether any by that ſervice? And by the whole court, he gained a ſettlement in *Chipping Wycombe,* though his maſter never lived there. *Str.* 528. *Foley* 200.

H. 1 *G.* 2. *Biſhop's Hatfield* and *St. Peter*'s in *St. Alban*'s. There was an order of two juſtices, to remove *Henry Langley* from *Hatfield* to *St. Peter*'s. Upon appeal to the ſeſſions, they ſtate the caſe ſpecially, that *Langley* was hired in *St. Peter*'s by Mr. *Arnold* (who had no ſettlement there) for one year, to ſerve as his huntſman; that Mr. *Arnold* had a dog kennel in *St. Peter*'s, where *Langley* was dieted and ſerved the year: but inaſmuch as Mr. *Arnold* himſelf had no ſettlement there, they vacate the order which ſent him to *St. Peter*'s. But by the court, The order of ſeſſions muſt be quaſhed; for this is exactly the caſe of the ſervant employed on the road, to look after ſtage horſes belonging to one who lived elſewhere, and yet the ſettlement was adjudged to be where the ſervice was. *Str.* 794.

T. 8 *G. St. Peter*'s in *Oxford* and *Fawley.* Dr. *Clavering*'s ſiſter lived with him at *Chriſt Church*, and hired a ſervant for a year, who was ſettled in *St. Peter*'s. His ſiſter afterwards goes to *Fawley* upon a viſit; and ſhe, with her ſervant, ſtayed there above 40 days, and afterwards came back again to *Chriſt Church*, where the ſervant ended the year's ſervice, being not 40 days after her return. The queſtion was, Whether this ſervant gained any ſettlement at *Fawley*, living with her miſtreſs who was only a viſitor? And by the whole Court; The ſettlement of the ſervant doth not at all depend on the ſettlement of the maſter; for if a maſter hire a ſervant for a year, and after remove from one pariſh to another during that year, it may be properly ſaid that the ſervant is hired in every pariſh he ſhall go into with his maſter; and the pariſh where he lives with his maſter the laſt 40 days of his year, is the place of his ſettlement. And adjudged that the ſervant was ſettled at *Fawley.* *Foley* 194. *Str.* 524.

E. 4 *G.* 2. *Goring* and *Moleſworth.* A perſon was hired for a year, and ſerved the year. The perſon, to whom he was hired, lived at *Goring*, and kept a boat which navigated from *Goring* to *London*, but the ſervant was not 40 days in the whole year at the pariſh of *Goring*, but ſerved out the year on board the boat. By the court; This was no ſettlement at *Goring.* *Seſſ. C. V.* 1. 327. *Caſ. of S.* 219.

T. 18 *G.* 2. *St. Peter's* in *Sandwich* and *Gooleſton*. A ſervant was hired for a year, during which he, with his maſter's leave, went to ſea upon the herring fiſhery, but hired another to do his work in the mean time: he returned at the end of three weeks after the expiration of his year, ſettled with his maſter, and received his whole year's wages. This the ſeſſions held was not a ſervice for a year; but the court held it a ſettlement; ſaying, he was to be conſidered all the while as in the ſervice of his maſter, and the perſon he found to do his work was his ſervant, and not the maſter's: wherefore the order was quaſhed. *Str.* 1232.

Same ſervice within 3 weeks; by a covenant ſervant.

(4) *M.* 1 *G. Pawlett* and *Burnham*. A perſon was a covenant ſervant for a year, but went away 3 weeks before his year was out, by his own and his maſter's conſent; and was abated 6 *s.* of his year's wages for it. It was objected, that being a covenant ſervant, this doth import that it was by deed, and then the conſent cannot diſcharge the covenant. By the court; Here is no fraud expreſſed or implied. It is not within the words of the act, nor the meaning. Can a man compel his ſervant to gain a ſettlement *nolens volens?* As to the covenant being by deed, and ſo the ſervice continuing, perhaps he might bring an action on the covenant, and as to that point the ſervice continued; but not as to gain a ſettlement, where the ſtatute ſaith he muſt ſerve for a year, which is not in this caſe. *Caſ. of S.* 84. *Foley* 187. *Seſſ. C. V.* 1. 71.

Same ſervice within 12 days.

(5) *M.* 9 *G.* 2. *Seaford* and *Caſtle Church*. On a ſpecial order of ſeſſions, it was ſtated, that a perſon was hired for a year, which he ſerved till the laſt 12 days, when he went away without the maſter's leave, and ſtaid till after the year was up, when he returned for his cloaths, and was paid the whole year's wages. And on conſideration, that if they once allowed this abſence for 12 days at the end of the year (which differed from an abſence in the middle of the year, which was purged by taking him again) they ſhould not know where to ſtop, it was determined that he gained no ſettlement. *Str.* 1022.

Same ſervice within a few days.

(6) *E.* 7 *G. K.* and *Iſlip*. A perſon is hired for a year; and in the year's ſervice his maſter gives him leave to go and ſee his mother for one day, and he tarried three days, and then came home again, and his maſter took him into his ſervice as before. It was objected, that his ſtaying to ſee his mother without leave, was a deſertion of the ſervice, and the time he ſtaid away takes ſo much off from a compleat ſervice for a year. But by the court; This will not prevent the ſettlement; for the maſter's taking him again is a purgation of the offence, and no interruption of his ſervice. *Caſ. of S.* 129. *Str.* 423.

In the ſame caſe it was ſtated, that the ſervant for ſix days was ſick, and incapable of any ſervice: And it was objected, that therefore he could not gain a ſettlement, which is to be acquired only by a ſervice for a year, but here he did not ſerve for ſix days, and ſo there wants ſo much of a ſervice for a year. But by the court; A ſervant that lies thus under the viſitation of god, which befals him not through his own default, is and muſt be taken to be all the while in the ſervice of his maſter; and if this exception

was

was to be allowed, it might prevent all the settlements in the kingdom. *Str.* 423.

Another circumstance in the same case, was this: The servant, 3 or 4 days before his service expired, desired leave of his master to go to a fair, to hire himself into another service. His master refused, and told him, if he went, he should not come into his house again. The servant went notwithstanding; and did not return, until the time of his service was expired. By the court; This is nevertheless a settlement: The request of the servant is a reasonable request, and the law will not suffer a master to shew himself so inhuman to his servant: A master cannot turn off his servant 2 or 3 days before the year expires; if he does, the service in point of law continues, and he gains a settlement notwithstanding. *Cas. of S.* 129. *Str.* 423.

H. 4 *G.* 2. *K.* and *Preston.* A person served under a hiring, his whole year within 5 days, and then left his master by consent, the parish officers where he lived having first given him 20*s.* to leave the parish. The justices held this service to be no settlement, and stated the case specially. It was objected, that this departure was fraudulent. But by the court; The justices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would without question have stated it to have been so; but that not being done, we cannot intend any fraud, nor that the party has gained any settlement, it being agreed on all sides, that he has not served his year. *Nelf. Poor.*

T. 8 *G. Eastland* and *Westhorseley.* The fact was stated specially on an order of sessions, that a servant was hired for a year, and the day before the year expired the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately, which the servant refused to do, insisting to serve out the year, whereupon the master turned him out of doors. And the court held this to be such a fraud in the master, as should not prevent the settlement of the servant. *Str.* 526.

Same service continued beyond the year.

(7) *M.* 19 *G.* 2. *Croscombe* and *St. Cuthbert*'s. A servant was hired for and served a year in *Croscombe.* He continued to serve on there without any new agreement for a quarter of a year, when the master removed into a house in *St. Cuthbert*'s, where the servant continued with him for half a year longer. The question was, Whether this was a settlement in *St. Cuthbert*'s within the reason of those cases that have held the settlement to be gained where the last 40 days service was? And the court held it a settlement there, for it is still a continuing in the same service within the meaning of the 8 & 9 *W. c.* 30. though there is no new agreement. And upon the whole there has been between this master and servant a hiring and service for above a year. *Str.* 1240.

Whether a certificate person can gain a settlement by service.

Unless he shall take a tenement of 10*l. a year, or execute an annual office*] *E.* 15 *G.* 2. *K.* and *Sherborne.* A certificate man has a son born in the parish to which he was certified, who when 16 years old hires himself as a servant to a button maker in the same

ſame pariſh, and ſerves a year. And upon conſidering the words of the ſtatute, which declare, That no perſon who comes in by certificate ſhall be adjudged to gain a ſettlement by any act whatſoever, except he takes 10 *l.* a year, or executes an annual office, —the court held, that the ſon of the certificate man was equally within it; and that therefore the hiring and ſervice in this caſe gave him no ſettlement. *Str.* 1165.

The ſame ruled ſo again, *H.* 19 *G.* 2. *K.* and *Bray. Str.* 1165.

vii. Of ſettlement by marriage.

What ſhall be deemed a ſufficient marriage ſo as to gain a ſettlement.

1. Heretofore it hath been ſomewhat doubtful, what ſhall be deemed a ſufficient marriage, ſo as that a woman ſhall gain a ſettlement thereby; and the courts have been favourable in admitting marriages, altho' not ſtrictly ſolemnized according to the laws of the church; but now by the ſtatute of the 26 *G.* 2. *c.* 33. a great diſtinction is made, between marriages ſolemnized before the 25th day of *March* 1754, and after that time: for by the ſaid ſtatute it is enacted, that after *March* 25, 1754, all marriages (except in *Scotland*, and except the marriages of jews and quakers, where both the parties are jews or quakers reſpectively) which ſhall be ſolemnized without licence or publication of banns, or in any other place than a church or a publick chapel (unleſs by ſpecial licence from the archbiſhop of *Canterbury*), or without the conſent of parents or guardians, (where either of the parties, not being a widower or widow, is under the age of 21) ſhall be null and void to all intents and purpoſes whatſoever. And theſe requiſites muſt appear, from the entry thereof in the regiſter book for that purpoſe.

Wife ſhall follow the huſband's ſettlement.

2. It ſeemeth to be a good general rule, that a woman marrying a huſband, who hath a known ſettlement, ſhall follow the huſband's ſettlement. And altho' in the caſe of *Uppoterce* and *Dunſwell*, *M.* 1. *G.* it was held, that the wife ſhall not gain a ſettlement with the huſband, until ſhe hath lived with him 40 days unremovable as part of his family; yet afterwards, in the caſe of *K.* and *Pinceborton*, *M.* 3 *G.* it was agreed by the court, that a wife is to be ſent to her huſband's ſettlement, tho' ſhe never lived with him there. And in the caſe of *St. Giles*'s and *Everſley Blackwater*, *H.* 10 *G.* the widow was removed to the deceaſed huſband's ſettlement, tho' ſhe had never been there; and it was ruled by all the court, that the removal was good, and that ſhe muſt be ſent to the laſt legal ſettlement of her huſband, having acquired no other ſettlement ſince his death. *Caſ. of S.* 89. *Seſſ. C. V.* 1. 80, 105. *V.* 2. 112.

Wife can gain no ſettlement without her huſband.

3. It ſeemeth alſo to be agreed, that a wife can gain no ſettlement, ſeparate and diſtinct from her huſband, during the coverture.

Caſe where the huſband hath no ſettlement.

4. It ſeemeth alſo to be agreed, that a woman marrying a huſband that hath no known ſettlement, doth not loſe her former ſettlement which ſhe had before marriage. But the great point of difference hath been, whether ſuch ſettlement continues to her during the coverture, or it is ſuſpended during the coverture,

and only revives after the husband's death. Which point includes in it this question, Whether the parish where the woman was last legally settled before marriage, shall by barely proving such marriage, avoid the settlement with them during the husband's life; or whether in order to avoid such settlement it is not also necessary for them to prove, that such woman hath gained another settlement, that is to say, that the husband hath a settlement, and where.

In relation to which case, where the husband hath no known settlement, it hath been adjudged as follows:

E. 2 *G. St. Giles*'s and *St. Margaret*'s. A woman marries a foreigner; and her husband dies. By the court; She must be sent to the place of her settlement before marriage. *Sess. C. V.* 1. 97.

H. 12 *G. Witham* and *Chiddingstone*. It was stated, that a single woman, settled at *Chiddingstone*, was married to a man who is since dead, but his settlement did not appear: And by the court, Her settlement before marriage stands. *Str.* 683.

M. 1 *G. Uppoterce* and *Dunscwell*. A woman is settled in *Dunscwell*; and afterwards marries a vagrant, whose settlement doth not appear. But he goes and lives in *Uppoterce*, and dies there. Two justices remove the widow to *Dunscwell*, where she was settled before marriage. And by the court; Where it appears that the husband in his life time had no legal settlement as can be found, there the marriage shall not put her in a worse condition than she was before, and is all one as the case of a *Scotchman* and a foreigner, and she shall not lose her former settlement. *Cas. of S.* 89. *Sess. C. V.* 1. 80.

Hitherto the cases seem to be agreed, being that the husband is dead. But the difficulty is, where the husband is supposed to be living. And in relation to this point, the following strong cases have been adjudged.

M. 12 *An. Dunsford* and *Wilborough Green*. A woman who was settled at *Wilborough*, marries *Archibald Player*, a *Scothman*, who had gained no settlement in *England*. Two justices remove her from *Dunsford* to *Wilborough*, the place of her settlement before marriage. Exception; this is a married woman, and by her marriage she ought to be settled where her husband was, and this cannot be right; for if the justices may send away a wife, it is making a divorce between husband and wife; and if he is a *Scotchman*, they ought to send her, as part of his family, to the bordering counties of *Scotland*, according to the act of the 39 *El. c.* 4. *s.* 6. The court held, tho' she was a married woman, yet if her husband had no settlement, she could not gain any other settlement than she had before marriage; and as for divorce, it was none; for the husband might come to her as well at *Wilborough Green* as at *Dunsford*. *Foley* 249. *Cas. of S.* 31.

Note; the act of the 39 *El.* only says, that the *Scotchman* himself, if a vagrant, may be so sent; but says nothing of his family.

M. 3 *G. St. Giles*'s and *St. Margaret*'s. *Sarah Etherington* was settled at *St. Giles*'s; and marries an *Irishman*. By the court;

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The marriage will not put her in a worſe condition than ſhe was before; and they held that ſhe continued her ſettlement, notwithſtanding her marriage. *Caſ. of S.* 98.

H. 12 *G. K.* and *Weſterham.* The order ſpecially ſtated by the ſeſſions, was this: It appeared to the court, by the teſtimony of *Elizabeth Pinchen*, that the ſaid *Elizabeth Pinchen* was, at the time the ſaid order was made, a married woman, and that her huſband was one *Thomas Pinchen*, who was born in *Wiltſhire*, but in what place or pariſh he had a ſettlement, he never informed her, nor doth ſhe know; but that he is run away, and ſtill living, for what ſhe knows. By the court; She ought to be ſettled where her ſettlement was before marriage. *Foley* 252. *Seſſ. C. V.* 2. 110.

On the contrary, *H.* 12 *G.* 2. *Stretford* and *Norton*, the caſe was thus: An *Engliſh* woman married an *Iriſh* man who had no ſettlement in *England.* He ran away; two juſtices remove the wife to the place of her ſettlement before marriage. And it was urged, that there could be no pretence that this ſeparated her from her huſband; and if ſhe cannot be ſent thither, ſhe can be ſent no where. But by *Lee* Ch. J. It is now a ſettled point, that by the marriage the woman's ſettlement is ſuſpended, whether the huſband has or has not a ſettlement; for otherwiſe the juſtices might ſeparate huſband and wife; and therefore to make the order good, it ſhould have appeared that the man was dead.—And the order was quaſhed by the whole court. And there were cited theſe two following caſes; *viz. T.* 1 *G. Fanwick* and *Marſon* It was there declared by the Ch. J. that the ſettlement of a woman, who marries a vagrant, is ſuſpended during the coverture; and that as the huſband cannot be ſent to the place of the wife's ſettlement, ſo neither can the wife her ſelf, becauſe a huſband and wife, being as it were but one perſon, cannot be parted. *T.* 9 *G. Shadwell* and *St. John's Wapping.* One *Ridley*, a vagrant, having no ſettlement, married a woman who had a ſettlement in *St. John's Wapping*, and had four children by her born in *Stepney.* And it was held, that the children were not ſettled in the place where they were born, but where the wife had a ſettlement; but that this was ſuſpended during the coverture, and it revived again upon the death of the huſband. *Andr.* 307. *Seſſ. C. V.* 2. 185.

Finally, in the caſe of *St. John's Wapping* and *St. Botolph's Biſhopſgate*, *H.* 28 *G.* 2. it is ſaid to have been adjudged as follows: *Margaret Kinley* having gained a ſettlement in *St. Botolph's* pariſh by hiring and ſervice, afterwards married *Thomas Kinley* an *Iriſhman*, who had no ſettlement in *England.* About two years ago, the huſband entred on board a man of war bound for the *Weſt Indies*, but *Margaret* heard he was living about two months ago; and the queſtion was, Whether her ſettlement which ſhe had before marriage ceaſed, or was in ſuſpence, during the coverture, and ſhe ſhould be looked upon as a caſual poor; or ſhe ſhould be ſent to the place of her ſettlement before marriage. After full conſideration, *Ryder* Ch. J. delivered the opinion of the court: 1. It is certain *St. Botolph's* was once her ſettlement, and that is not diſputed. 2. That ſettlement continues till ſhe gains a new

one. 3. That she has never yet gained a new one. To the second point he said, a settlement is a permanent thing; it lasts during life, or till a new one is acquired: and there is no case to be found, where it has been determined or ceased sooner. Neither can any person discharge his own settlement sooner, or by any other means. The question is not, whether she gained any new settlement by marriage, but whether her old settlement was discontinued by her marriage with a person that had none. It is absurd to say, she shall lose her own, without getting another. The objection that the husband and wife would be separated, is of no weight here; for they are separated already. I must own the case of *Stretford* and *Norton* is not to be distinguished from the present, and is against our present opinion. To be sure we must have great regard to former resolutions in this court; but we must judge upon the cases before us. How that case came to be determined so, I do not know, but there are at least four authorities the other way (which perhaps might not then be cited), and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement is only suspended during her husband's continuance with her; and when he leaves her, it revives.

Whether the wife may be removed from the husband.

5. *H.* 9 *G. St. Michael's* and *Nunny*. Order of removal, reciting that the wife of a poor person who is now living, had intruded, and was likely to become chargeable, and that the place of her settlement was in the parish of *St. Michael*, she is therefore removed thither. It was moved to quash the order, because it did not appear, the husband was, at the time of the removal, in the parish of *St. Michael*, so that it may be they sent the wife away from the husband. But by the court, We cannot intend he was not; if he was in the parish from which she was sent, that indeed would vitiate the order; but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed. *Str.* 544.

Marriage fraudulently procured.

6. Although it is generally true, that no settlement shall be good, which is brought about by fraud or practice; yet it seemeth that the rule faileth in this case, and that if the marriage take effect, the settlement is good: for the two following cases do proceed upon such supposition.

M. 11 *G.* The overseers were indicted for a conspiracy, in giving a small sum of money to a poor man of another parish, for marrying a poor lame woman of their own parish, and so by this contrivance conspiring to settle the woman in the other parish, where her husband was settled: By the court; If there is a conspiracy, to let lands of 10*l.* a year to a poor man in order to gain him a settlement, or to make a certificate man a parish officer, or to send a woman big of a bastard child into another parish to be delivered there, and so to charge the parish with the child, these are certainly crimes indictable. But this indictment was quashed, for want of averment, that the woman was last legally settled in the parish relieved by her marriage. *Nelf. Conspir. Sess. C. V.* 1. 265.

H. 6 *G.* 2. *K.* and *Parkins.* A ſingle woman of *Studley*, big with child of a baſtard, was ſent back to *Studley*. *Parkins* overſeer of *Studley*, threatned with all the ſeverity of the law, to force her to marry a ſtranger of another pariſh, againſt both his and her conſent, he giving five guineas to the huſband, and keeping him in liquor. By the court; Shew cauſe why information ſhould not go. *Seſſ. C. V.* 1. 176.

7. What hath been diſcourſed under this head, hath been concerning the ſettlement of the wife with the huſband: There is another caſe, concerning the huſhand's ſettlement with the wife; which is, when a *Scotchman* or *Iriſhman*, or the ſubject of a foreign realm, ſhall marry an *Engliſh* woman having an eſtate, and ſhall reſide with her upon the ſame 40 days unremovable. The queſtion how far this ſhall gain him a ſettlement, depends upon what hath been ſaid before, concerning the ſettlement of foreigners, in the beginning of this treatiſe concerning ſettlements. Settlement of the huſband with the wife.

viii. Of ſettlement by continuing 40 *days after notice.*

By the 13 & 14 C. 2. c. 12. *On complaint within* 40 *days after any perſon ſhall come to ſettle in any tenement under* 10*l. a year, two juſtices may remove him to the place where he was laſt legally ſettled for* 40 *days.*

But by the 1 J. 2. c. 17. *The* 40 *days continuance of ſuch perſon in a pariſh, intended by the ſaid act to make a ſettlement, ſhall be accounted from the time of his delivering notice in writing, of the houſe of his abode, and the number of his family, if he have any, to one of the churchwardens or overſeers of the pariſh to which he ſhall remove.* ſ. 3.

And by the 3 W. c. 11. *The ſaid* 40 *days continuance of ſuch perſon in a pariſh or town, intended by the ſaid acts to make a ſettlement, ſhall be accounted from the publication of a notice in writing, which he ſhall deliver, of the houſe of his abode, and the number of his family, if he have any, to a churchwarden or overſeer. Which ſaid notice in writing, the ſaid churchwarden or overſeer ſhall read or cauſe to be read publickly, immediately after divine ſervice, in the church or chapel, on the next lord's day, when there ſhall be divine ſervice in the ſame. And the ſaid churchwarden, or overſeer, ſhall regiſter or cauſe to be regiſtred, the ſaid notice in writing, in the book kept for the poor's accounts.* ſ. 3.

And *if any churchwarden or overſeer ſhall refuſe or neglect to read or cauſe to be read ſuch notice in writing as aforeſaid, he ſhall (on proof thereof by the oath of two witneſſes before one juſtice) forfeit for every offence* 40 s. *to the party grieved, by diſtreſs, by warrant directed to the conſtable of the pariſh or town where the offender dwells; and for want of ſufficient diſtreſs, the ſaid juſtice ſhall commit him to the common gaol for one month. And if any churchwarden or overſeer ſhall refuſe or neglect to regiſter, or cauſe to be regiſtred, ſuch notice in writing; he ſhall, on the like conviction, forfeit* 40 s. *to the uſe of the poor of the pariſh or town where the offender dwells, to be levied as aforeſaid; and for want of ſufficient*

diſtreſs, then the ſaid juſtice ſhall commit him as aforeſaid, for the time aforeſaid. ſ. 5.

After any perſon ſhall come to ſettle] But no ſoldier, ſeaman, ſhipwright, or other artificer, or workman in his majeſty's ſervice, ſhall have any ſettlement in any pariſh, port-town, or other town, by delivering and publication of notice in writing, unleſs the ſame be after a diſmiſſion out of the ſervice. *ſ.* 4.

In any tenement under 10l. *a year*] But this hath been always underſtood of perſons coming to ſettle upon ſuch tenement, as farmers thereof, and not where the ſame is their own proper eſtate; and therefore a man's coming to ſettle upon his own eſtate is not within the act.

Where he was laſt legally ſettled for 40 *days*] *H.* 10 *G.* Caſe of *Cirenceſter.* It was held, that living 40 days ſucceſſively was not neceſſary; and Mr. J. *Forteſcue* ſaid, that living 40 days off and on, is making the caſe ſtronger than living 40 days together in a pariſh. *Sefſ. C. P.* 2. 40. *Str.* 579.

And, *H.* 12 *G.* 2. *Souton* and *Sidbury.* It was admitted by the counſel, and held by the court as a point indiſputable, that it is not neceſſary upon this ſtatute, that the inhabitancy ſhall be for forty days ſucceſſively. *Andr.* 345.

Notice in writing] But perſons executing a publick annual office, or paying pariſh rates, or being ſervants for a year, or apprentices by indenture, ſhall thereby be ſettled without notice in writing. 3 *W. c.* 11. *ſ.* 6, 7, 8.

And in general, all perſons not removable may become ſettled without giving notice; for the notice is only intended where the perſon is removable; for if he is not removable, the notice is to no purpoſe: for continuing 40 days unremovable without notice, and continuing 40 days removable but not removed after notice publiſhed, do equally gain a ſettlement.

In writing] *H.* 3 *G.* 2. *Aldenham* and *Abbots Langley.* Upon a ſpecial order of ſeſſions, it was ſtated, that a poor perſon forty years ago came into a pariſh, and lived there ever ſince; that he attended the leet, amended the highways, had a pew in the church, five children, and did watch and ward. But by the court, Thoſe are not annual offices in the pariſh, and the 1 *J.* 2. *c.* 17. was purpoſely made to avoid theſe conſtructive notices, and require notice in writing; and therefore they held it no ſettlement. *Str.* 853.

H. 8 *W. Talbury* and *Foſton.* A perſon exerciſed the trade of a blackſmith; was publickly employed by the pariſhioners, by the bailiff of the lord of the manor, the vicar, and the juſtice. The queſtion was, Whether this publick way of living was not tantamount to notice in writing, which was only deſigned to prevent clandeſtine entries and living. By the court; This might perhaps have ſatisfied the ſtatute of the 1 *J.* 2. but the 3 *W.* hath particularized the notice, and what ſhall be tantamount to it, and what not; but this is not among the particulars of the ſtatute, and therefore is not ſuch notice as the law requires. 2 *Salk.* 476. *Foley* 114.

Publication

Publication of the notice] In the case of *K.* and *Chertsey*, The banns of matrimony of a poor person were published in the church; and it was insisted, that this was a notice sufficient, being in writing, and published in the church: But by the court; This is not sufficient; for the other requisites by the 3 *W.* must be observed; and that being an explanatory act, cannot be taken by equity. 5 *Mod.* 414.

After all, this kind of settlement, by continuing 40 days after publication of notice in writing, is very seldom obtained; and the design of the acts is not so much for the gaining of settlements, as for the avoiding of them, by persons coming into a parish clandestinely: for the giving of notice is only putting a force upon the parish to remove. But if a person's situation is such, that it is doubtful whether he is actually removable or not, he shall by giving of notice compel the parish either to allow him a settlement uncontested, by suffering him to continue 40 days; or, by removing him to try the right.

ix. Of settlement by paying parish rates.

By the 13 & 14 C. 2. c. 12. *Forty days inhabitancy shall gain a settlement*; By the 1 J. 2. c. 17. *Such 40 days are to be reckoned from the delivering of notice in writing*; And by the 3 W. c. 11. *from the publication of such notice in the church.*

But if any person who shall come to inhabit in any town or parish, shall be charged with, and pay his share, towards the publick taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same, tho' no such notice in writing be delivered and published. 3 W. c. 11. s. 6.

But by the 9 & 10 W. c. 11. *Persons residing under a certificate shall gain no settlement, by being rated to and paying any such levies, taxes, or assessments.*

If any person] *M.* 13 *G. Solontongham* and *Worplesdon.* The *landlord* was rated to the poor, for the tenement as being in his hands, and the *tenant* paid the rate. By the court; The tenant doth not gain a settlement, unless he be both rated and pay. *Foley* 128. *Sess. C. V.* 2. 122.

And this kind of practice may be sometimes, on purpose to avoid a settlement. But it lies in the power of the justices to adjudge whether or no it shall be deemed a fraud.

E. 4 *G.* 2. *Kinsare* and *Kingswinford.* A person rented a tenement, and paid all parochial taxes for the same in his own right, but was not rated in the parish books; but the name of *Richard Cotes* that rented the tenement before, was kept in the levy books. By the court; This was no settlement, because he was not assessed as well as paid. *Foley* 120.

H. 8 *W. St. Mary le more* and *Heavy tree.* The rates were charged, not on the person, but on the house: Adjudged, that this rating and payment made a settlement. 2 *Salk.* 478.

Shall be charged with and pay] *M.* 9 *G.* 2. *K.* and *Bovindon.* It was held, that *payment* to the poor doth not give a settlement,

unleſs the party was *rated*, for the *rating* is the act of the pariſh, and not the other. And the ſettlement ariſeth from the pariſh's giving that evidence of their being ſatisfied of his ability. *Str.* 1023.

M. 7 *W. Talborn* and *Boſton.* If a man is taxed, and after taxation ſtays 40 days, it is no ſettlement unleſs he pay the tax. 2 *Salk.* 523.

The publick taxes or levies of the ſaid town or pariſh] No perſon who ſhall be aſſeſſed to the *ſcavenger*'s rate, or to the repairs of the *highways*, and ſhall duly pay the ſame, ſhall be deemed to be ſettled thereby. 9 *G. c.* 7. *ſ.* 6.

T. 9 *An.* Paying to the *county bridge* gains no ſettlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant of the pariſh or town where he lives. *Caſes of S.* 1.

H. 9 *G.* 2. *K.* and *Bramley* in the borough of *Leeds* in *Yorkſhire.* Two juſtices make an order to remove *John Cloſe*, from *Armley* another townſhip in the ſame borough, to *Bramley*, who appeal, and the ſeſſions confirm the order, and ſtate ſpecially, that the ſaid *John Cloſe*, after his ſettlement in *Bramley*, removed with his family, and inhabited and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the *land tax* only. By the court; It is a good ſettlement, and the orders were quaſhed. *Seſſ. C. V.* 2. 167.

But by the 21 *G.* 2. *c.* 10. Perſons aſſeſſed to and paying the *duty on houſes and windows*, ſhall not thereby gain a ſettlement.

x. *Of ſettlement by ſerving a pariſh office.*

By the 13 & 14 C. 2. c. 12. *Forty days inhabitancy ſhall gain a ſettlement*; By the 1 J. 2. c. 17. *Such* 40 *days are to be reckoned from the delivering of notice in writing:* And by the 3 W. c. 11. *they are to be reckoned from the publication of ſuch notice in the church.*

But if any perſon who ſhall come to inhabit in any town or pariſh, ſhall for himſelf, and on his own account, execute any publick annual office or charge, in the ſaid town or pariſh, during one whole year; he ſhall be adjudged to have a legal ſettlement in the ſame, tho' no ſuch notice in writing be delivered and publiſhed. 3 W. c. 11. ſ. 6.

By the 9 & 10 W. c. 11. *No perſon who ſhall come into any pariſh by certificate, ſhall be adjudged by any act whatſoever, to have procured a legal ſettlement in ſuch pariſh, unleſs he ſhall really and* bona fide *take a leaſe of a tenement of the yearly value of* 10 l. *or ſhall execute ſome annual office in ſuch pariſh, being legally placed in ſuch office.*

Publick annual office or charge, in the ſaid town or pariſh] *H.* 9 *An. Gatton* and *Milwich.* A perſon being choſen *pariſh clerk* by the parſon, ſerved for ſeveral years, and received his fees and dues. By the court; It is a pariſh office, and has the care and cuſtody of the ornaments of the church. 'Tis true, if he is poor,

and

and has a family, they may remove him; but if they let him continue a year, none can remove him; for altho' he came in by the parſon only, yet the pariſh paying him, it is a conſent and approbation; and by this conſent of theirs, the law adjudges him in by the concurrence of the pariſh. *Caſes of S.* 241. 2 *Salk.* 536. *Foley* 123.

M. 9 *An. St. Mary* and *St. Laurence* in *Reading*. The queſtion was, Whether the being *churchwarden* for a borough, and ſerving that office for a year in the borough, which extends it ſelf into ſeveral pariſhes, is ſuch a ſervice of an annual office as will gain a ſettlement? By the whole court, it was held to be an office, the ſerving of which for one whole year, was ſufficient to gain him a ſettlement in that pariſh within the borough, in which he lived. *Foley* 121.

H. 7 *G.* 2. *Biſham* and *Cook*. The ſeſſions ſetting out the fact ſpecially, adjudge the ſettlement of a poor perſon to be at *Biſham*, becauſe when he lived in that pariſh, he executed the office of *collector of the duties* given by the 6 & 7 *W. c.* 6. on *births and burials*. It was moved to quaſh it, becauſe this was not a pariſh office, and it would be giving the commiſſioners (who are to appoint the collectors) a power to bring what charge they would upon the pariſh: beſides, it was not ſtated in the order, that this was an annual office, as it muſt be to give a ſettlement, within the expreſs words of the act. On the other hand was cited the aboveſaid caſe of *St. Mary* and *St. Laurence* in *Reading*. And by the court, The reaſon why the executing offices gives a ſettlement without notice is, becauſe of the notoriety of the thing, of which the parliament thought it impoſſible but the pariſh ſhould have notice: can any thing be more notorious than this, which is to collect a duty from houſe to houſe? We cannot ſuppoſe a fraud in the commiſſioners, that they would appoint a perſon of no ſubſtance to be collector, only to bring a charge upon the pariſh. It needs not be a *pariſh office*, but a *publick annual office in the pariſh*. And as to its not being ſaid, that this man executed it for a year, we muſt take it he did ſo, becauſe it appears on looking into the ſtatute, that the power given to the commiſſioners is to appoint a perſon who ſhall be collector of the duties for a year, and then give in his accounts. It hath been held a ſettlement in the caſe of the land tax, and why not in this? And the order was confirmed. *Str.* 411. *Foley* 124.

H. 2 *G. St. Trinity* and *Garſington*. It was held, that a perſon who was choſen a *tythingman* for a year, and ſerved that year, was ſuch an officer as thereby gained a ſettlement. *Foley* 123.

H. 9 *G. Burliſcomb* and *Samford Peverell*. The ſeſſions on a ſpecial order adjudge, that executing the office of *tythingman* would not gain a ſettlement: But by the court, The order muſt be quaſhed, for this is an annual office in the pariſh, within the words and meaning of the act. *Str.* 544.

Certificate, &c.] *E.* 8 *G.* 2. *St. Maurice* and *St. Mary Calendre* in *Wincheſter*. Upon a ſpecial order of ſeſſions, it was held, that executing the office of *conſtable* in the city at large, gave a certificate

cate man a ſettlement in that pariſh where he inhabited; though he was appointed by the corporation in general, and acted through all the pariſhes in the city; for he executes an annual office in the pariſh, which are the words of the ſtatute. *Str.* 1014. *Seſſ. C. V.* 1. 315.

And, *E.* 8 *G.* 2. *K.* and *St. Mary Berkhamſtead*; The court ſeemed to be of opinion, that the executing the office of a *pariſh clerk* is ſufficient for a certificate perſon to gain a ſettlement; for it is an *annual office* and more. *Seſſ. C. V.* 2. 182.

M. 17 *G.* 2. *Wingham* and *Selling*. It was ſtated in a ſpecial order, that a certificate man, having notice that he was appointed borſholder, never took the oath of office, but once executed a warrant of a juſtice directed to the borſholder. And this the ſeſſions determined to be gaining a ſettlement within the 9 & 10 *W. c.* 11. But by the court, The order muſt be quaſhed, for the words of the act are, *being legally placed in ſuch office*, that is, being the officer both *de facto* and *de jure*, which this man was not, the order ſtating negatively, that he was not legally placed therein, which can only be by an appointment and ſwearing in. *Str.* 1199.

E. 18 *G.* 2. *Sheepſhead* and *Melborne*. A perſon was certificated from *Sheepſhead* to *Melborne*, and ſtayed there ten years, during which time the lady *Elizabeth Haſtings* conveyed lands to truſtees for ſeveral charities out of the profits, and amongſt others, the ſum of 10 *l.* a year to the charity ſchool at *Melborne* to be paid to the vicar there for the time being. In a ſpecial order of ſeſſions it was ſtated, that the certificate man officiated as ſchoolmaſter ſeveral years, and received the 10 *l.* a year from the vicar: and this the ſeſſions held, gained him a ſettlement in *Melborne*, where they declare he had a freehold eſtate; and ſo had both the requiſites to obtain a ſettlement to a certificate perſon, namely, a tenement of 10 *l.* a year, an executing an annual office: But by the court, The order muſt be quaſhed: for it doth not appear how he came into this employment, and the legal right to receive the ſalary is in the vicar, who not caring to officiate himſelf, has therefore paid it over to this man as his deputy, which could never give any perſon a ſettlement, much leſs to a certificate man. *Str.* 1225.

xi. Of ſettlement by renting 10 l. *a year.*

By the 13 & 14 C. 2. c. 12. *On complaint within* 40 *days after any perſon ſhall come to ſettle in any tenement under* 10 l. *a year, two juſtices may remove him to where he was laſt legally ſettled for* 40 *days.*

By the 9 & 10 W. c. 11. *No perſon who ſhall come into any pariſh by certificate, ſhall be adjudged by any act whatſoever to have gained a legal ſettlement in ſuch pariſh, unleſs he ſhall really and* bona fide *take a leaſe of a tenement of the yearly value of* 10 l. *or ſhall execute an annual office in ſuch pariſh.*

Shall come to ſettle] For taking land in the pariſh, of whatever value it ſhall be, without coming to reſide there, will not gain a ſettlement.

In any tenement]. Here it occurs to be conſidered, what ſhall be a *tenement* within this act, ſo as to gain a ſettlement. Concerning which it hath been adjudged as follows:

H. 10 *An. Evelin* and *Rentcomb.* An order was drawn up ſpecially to have the opinion of the court, Whether renting of a *water mill* of 10*l.* a year, would make a ſettlement? And by the whole court clearly, a mill is a *tenement*, and the renting thereof muſt gain a ſettlement within the ſtatute. 2 *Salk.* 536. That is, if the party lives therein, or within the pariſh.

T. 10 *G.* 2. *Butley* and *Benhall.* The queſtion was, whether renting a *windmill* at 14*l.* a year, gained a ſettlement; it having been determined that a watermill did. It was ſaid, thoſe are always habitable, but the others often are not. But by the court, It is the ſame as if he had rented land of that value.

H. 12 *G. Stone* and *Kniver.* Upon a ſpecial order of ſeſſions, it was ſtated, that a poor perſon rented a *coney warren* and a cottage upon it at 10*l.* a year, which the juſtices were of opinion did not gain him a ſettlement. But by the court, A *mill* hath been held to be a tenement within the ſtatute, and why not this? It is his ability to pay 10*l.* a year, that is the foundation of the ſettlement, and whether he pays it for a houſe of habitation, or for a warren which brings him in a profit, is not material: the order of ſeſſions muſt be quaſhed. *Str.* 678. *Seſſ. C. V.* 2. 109.

As to the caſe, *Whether it ſhall be one entire tenement*; it hath been adjudged as here followeth:

E. 3 *G.* 2. *Minchin-hampton* and *Biſley.* Order ſpecially ſtated: A poor perſon rented, in the pariſh of *Biſley*, lands of the yearly value of 8*l.* from his father, an houſe of the yearly rent of 1*l.* 10*s.* from his uncle, and the ſame year *took the paſture eatage* of a piece of ground, in the ſaid pariſh from *Michaelmas* to *Candlemas*, and paid 12*s.* for the ſame, which piece of ground was worth 6*l.* a year. It was urged, that this was a good ſettlement, becauſe during thoſe three months the man was not removable. But in this caſe, the court held, that *taking the paſture of a piece of land* was not more than taking the herbage, or than taking the common, which could not be eſteemed part of a *tenement* within the meaning of the ſtatute; but ſeemed to think, that if the words had been, that he had *taken a paſture ground* for 3 months, that would have made a good ſettlement. *Seſſ. C. V.* 2. 132. *Str.* 874.

So that it ſeemeth that this was only an error in the ſtate of the caſe by the ſeſſions, in ſaying that he rented the *herbage*, inſtead of ſaying that he rented the *land*; and that if this laſt *item* could have been deemed any part of a tenement, the whole 3 parcels together, being within the ſame pariſh, would have made up one ſufficient tenement whereby to have gained a ſettlement: that is, ſuppoſing the renting the ſame for three months would have ſatisfied the ſtatute, on which point judgment was not given, the order (which made the ſame no ſettlement) being confirmed by the court, for the reaſon abovementioned.

But that two tenements in the ſame pariſh, rented by the ſame perſon, are ſufficient within this ſtatute to gain a ſettlement, will further

further appear from the following report: *M.* 1 *G. North-Nibley* and *Wotton under Edge.* A person rented an alehouse at 5 *l.* a year, at *Lady-day*, for a year; and in *May* following rented a piece of land for 6 *l.* a year; held the same for two months; and ran away. It was held, that it was not necessary the messuage or tenement should be rented of one person; tho' it be rented of several, yet in him it is but one, and the statute is satisfied, he being of ability to be trusted with a tenement of 10 *l.* a year. Besides, the running away did not alter the case; he being still liable to pay the rent; the contract continued: and living there but 40 days, the contract being for a year, it is good. The statute says, renting a tenement of 10 *l.* a year, but doth not say for what time; as to that it is silent: By *Parker* Ch. J. If he had taken it for a month, it had not been a settlement; for there, altho' he pay a rent proportionable to the year, yet he is not thought of ability, or sufficient to be trusted with it for a whole year. *Cases of S.* 86. *Sess. C. V.* 1. 73. *Foley* 79.

Furthermore; It is to be considered, How far *the same tenement, but lying in different parishes*, shall gain a settlement: As to which it hath been adjudged as follows;

T. 3 *G. South Sydenham* and *Lamerton.* A person rented a tenement of 10 *l.* a year, being one intire tenement, but lying in two parishes. The question was, Whether this gained a settlement? By the court; If the tenement be intire, tho' the lands be in different parishes, it seems to be a settlement in that parish where the house is; otherwise, where the tenements are distinct, and lie in different parishes, as if a tenement of 8 *l.* lie in one parish, and a tenement of 3 *l.* in another. *Str.* 57. *Sess. C. V.* 1. 115. *Foley* 81.

But the question in this case only was, Whether one and the same tenement, and not whether two distinct tenements, of the yearly value of 10 *l.* but lying in different parishes, shall gain a settlement: So that the determination in this case, as to this latter point, was extrajudicial. And the reason given by the court in this case doth extend as well to different tenements, as to one intire tenement, *viz.* The mischief recited by the statute, and intended to be prevented, is the vagrancy of poor persons, who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, namely, such persons who are not capable of hiring a tenement of 10 *l.* a year; now the man's sufficiency is not the less, because 6 *l.* a year, part of the tenement, is in a different parish. There are considerable farmers who do not rent 10 *l.* a year in any one parish, and it would be hard to adjudge that therefore they gain no settlement. *Str.* 58. *Foley* 81.

M. 3 *G.* 2. *Elsted* and *Hollingbourn.* The case was this: A person rented a tenement, consisting of a farm house and lands of 12 *l.* 10 *s.* a year; which house and lands laid contiguous, and had been usually letten together and occupied by the same person, but the house and so much of the land, as together amounted to 9 *l.* a year, lay in one parish, and 3 *l.* 10 *s.* in another parish.

parish. By the court, this was held to be a settlement; on the authority of *South Sydenham* and *Lamerton*. *Sess. C. V.* 2. 130. *Str.* 849.

Further yet; It remains to be considered, how far *two distinct tenements, one being in one parish, and another being in another parish*, shall be deemed a sufficient tenement within the act, whereby to gain a settlement: For altho' in the case of *South Sydenham* and *Lamerton* aforesaid, the court seemed to be of opinion that two such tenements would not gain a settlement; yet that (as hath been observed) was not the point in question. And in the case of *K.* and *Sandwich*, *T.* 8 *G.* 2. It was resolved as follows:

A person rented a tenement of 30*s.* a year in one parish, and then took a parcel of land of 12*l.* a year in another parish, and occupied that, and continued in possession, and lived upon the former tenement during that time. The court held, that thereby he gained a settlement in the parish where he lived. *Sess. C. V.* 2. 166.

And the same will appear further confirmed, when we come to speak of certificate persons gaining settlements by 10*l.* a year.

Under 10*l.* *a year*] If the tenement is under 10*l.* a year, the justices upon complaint within 40 days, have power to remove the person coming there to reside; if it is not under 10*l.* a year, they have no power to remove him; and continuing unremovable for 40 days, he thereby gains a settlement.

Upon which it is observable, that payment of the rent can be no matter of consideration with regard to the settlement; for the settlement is obtained before the rent becomes due. For the settlement is not suspended, as in the case of a hired servant, until he hath ended his year; but so soon as he hath resided 40 days, he is settled without more: even as a servant hired for a year, became settled in 40 days, before the statute of 8 & 9 *W.* and as apprentices are still settled in 40 days, without any regard to serving out their time.

Ten pounds a year] Upon these words the *value* of the tenement is considerable, or what shall be deemed a tenement of 10*l.* a year sufficient to gain a settlement. Concerning which it hath been adjudged as follows:

H. 13 *G.* 2. *Southwald* and *Yokesford*. A person took a house, and agreed to pay 10*l.* a year for it; and the landlord agreed to make new buildings. These improvements were never made, and the house worth but 6*l.* a year. By the court; The sessions must judge upon the facts; they have stated that the agreement was for 10*l.* a year; this is evidence of the value; but the justices have a right to inquire into the real value, and that is but 6*l.* a year, and there is no fact to shew this 10*l.* a year. Therefore adjudged, that this was no settlement. *Sess. C. V.* 2. 198. *Str.* 1127.

T. 3 *G.* *South Sydenham* and *Lamerton*. Order specially stated: A person took a lease of a tenement, for 99 years, determinable on 3 lives, and paid his fine, and the rent reserved was but 7*l.* but the real value was 13*l.* By the court; The quantity of the

rent

rent is not material, but the value of the tenement. If there be a leaſe of lands worth 10*l.* a year, and a fine be paid, and 20*s.* only reſerved, it makes a ſettlement; ſo if no fine be paid, or no rent reſerved, yet if the tenement is worth 10*l.* a year, it makes a ſettlement: for the ſettlement depends on the value of the tenement, and not on the rent. *Seſſ. C. V.* 1. 115. *Fol.* 81. *Str.* 57.

T. 14 *G.* 2. *Kirton* and *Weſton.* Order ſpecially ſtated: A perſon rented a tenement at 10*l.* a year, which had been let ſo for 5 years before; but the tenement had been uſually let at 7*l.* a year, and when the ſaid perſon was told it was too dear, he ſaid he did it to gain a ſettlement; but the ſeſſions did not adjudge it a fraud. Upon this it was urged, The conſideration here muſt be, whether upon the ſtate of this caſe, he rented a tenement under the value of 10*l.* a year; for if not, it is a good ſettlement; for they ſaid, they would not hold this to be fraudulent, it not being ſo adjudged, and evidence of fraud is not ſufficient; and as to the value, they muſt take it to be according to the rent, unleſs the contrary was ſtated; for as it is a removal of a man from his farm, it ſhould be ſhewn to be under value. *Seſſ. C. V.* 2. 141. *Str.* 1156.

Unleſs he (the certificate perſon) *ſhall really and* bona fide *take a leaſe*] *T.* 9 *G. K.* and *Little Dean.* It was ſtated, that a man took a leaſe for 7 years, and objected that it might be only by parol, and then it is void for the whole, and there can be no ſettlement. But by the court; Then it ſhould have been ſtated to be by parol; we muſt take it to be by deed, otherwiſe it is no leaſe at all. And the order was confirmed. *Str.* 555.

H. 8 *G. Cranly* and *St. Mary Guilford.* Upon a ſpecial order of ſeſſions it was ſtated, that a certificate man agreed with the leſſee of a mill, that he ſhould occupy the mill, and pay 12*l.* a year; that there was no under-leaſe or aſſignment, but in purſuance of that agreement the certificate man occupied the mill two years, and paid the rent. The ſeſſions adjudge it no ſettlement. But by the court; The order muſt be quaſhed: for if this be not an abſolute leaſe for a year (as *Eyre* J. ſaid it was, the rent being reſerved as the rent for a year), yet it is undoubtedly a leaſe at will, which is ſufficient to gain a ſettlement. *Str.* 502.

A leaſe of a tenement] *M.* 9 *G. St. John's Hertford* and *Amwell.* A certificate man took a farm of 10*l.* a year, part of which was in *St. John*'s, and part in *Amwell*; but the greateſt part, together with the houſe, being ſtated to lie in the pariſh that received his certificate, the court held it a ſettlement there. *Str.* 529. *Caſ. of S.* 148.

H. 8 *G.* 2. *St. Mary Calendre* and *St. Thomas.* It was ſaid, that theſe acts have been liberally expounded, and that renting 10*l.* a year in different pariſhes will avoid a certificate. *Seſſ. C. V.* 1. 315.

E. 4 *G.* 2. Caſe of *Stapleford* in *Leiceſterſhire.* A perſon took 3*l.* a year in the place he was certificated to, and 40*l.* a year in

the next pariſh, but lived where the 3 *l.* was; and it was held a ſettlement there. *Str.* 849.

Upon the whole, notwithſtanding what hath been ſo often mentioned above, as to the ſuppoſed *ſufficiency* of the tenant to ſtock the tenement upon which he comes to reſide, yet the ſtatute takes no notice of that; and therefore, altho' it may be a good general reaſon to ſuppoſe, that a perſon of ſuch ability is not likely to become chargeable, yet ſuch ability doth not ſeem to enter as any neceſſary ingredient into the ſettlement; and if the landlord will truſt the tenant, it ſeemeth that the pariſh hath no remedy, unleſs the juſtices ſhall adjudge it a fraud. And in the caſe of *giving ſecurity* for the rent, it hath been determined as follows:

T. 10 *G.* 2. *Butley* and *Benhall.* A perſon rented a windmill at 14 *l.* a year; but gave ſecurity for the rent: It was objected, that this was no ſettlement, for that the foundation thereof is the credit of the party, which fails in this caſe. But by the court; Giving ſecurity for the rent doth not alter the caſe; for he that has credit to give ſecurity, has credit to pay rent. *Sſſ. C. V.* 1. 320. *Andr.* 3.

And it may be obſerved upon this caſe, that it requires no great *ability* to ſtock a windmill.

xii. Of ſettlement by a perſon's own eſtate.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint within* 40 *days after any perſon ſhall come to ſettle in any tenement under* 10 *l. a year, two juſtices may remove him.*

And by the 9 & 10 *W. c.* 11. *No certificate perſon ſhall gain a ſettlement, but by renting* 10 *l. a year, or executing an annual office.*

Upon which two ſtatutes the following caſes are conſiderable:

1. How far a perſon, having an eſtate of his own, tho' under 10 *l.* a year, ſhall gain a ſettlement thereby, within the ſaid ſtatute of the 13 & 14 *C.* 2.

(1) *E.* 11 *An. Harrow* and *Edgware.* A perſon ſettled at *Harrow*, went into the pariſh of *Edgware*, and purchaſed a copyhold eſtate for life, and lived therein 4 or 5 years, and died. And as this was a tenement under 10 *l.* a year, the queſtion was, upon the 13 & 14 *C.* 2. whether this gained him a ſettlement at *Edgware?* It was argued, that the ſtatute hath been always held to mean an eſtate which a man takes to farm, and not an eſtate of his own; for if a perſon has a freehold, he cannot be removed from it, tho' not worth 10 *l.* a year. And by *Parker* Ch. J. and the court; Where a perſon has an eſtate for life, or an eſtate of inheritance of his own, that gains him a ſettlement, tho' leſs than 10 *l.* a year; for he cannot be removed, and if he cannot be removed, he certainly gains a ſettlement. *Foley* 257. Perſon not removable from his own.

E. 13 *G.* 2. *Harſfield* and *Furley.* On a ſpecial order of ſeſſions, relating to the ſettlement of a boy of 8 years and a girl of 6, it was ſtated, that the mother of theſe children had an eſtate of 4 *l.* a year in *Furley*, where ſhe and her huſband lived and had

theſe

theſe children: that ſhe dying, the huſband became tenant by the curteſy; and whilſt ſuch, he took 30 *l.* a year in *Harſfield*, and lived one year there with his two children, and then died: that the children being found with their grandmother at *Furley*, were both removed to *Harſfield*: which order the ſeſſions confirmed. And now the court, upon argument, confirmed the orders as to the girl, but quaſhed them as to the boy. For as to the boy, he was tenant in fee of the 4 *l.* a year. And though it was not ſtated, that he was actually upon that ſpot; yet it was enough, that he had ſuch an eſtate in the pariſh, from which he could not be removed. But as to the daughter it is otherwiſe; ſhe could demand no maintenance out of her brother's eſtate: and it was never yet determined, that children ſhould go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the pariſh where they are ſettled. *Str.* 1131.

T. 7 *G.* 2. *K.* and *Sandridge*. *Thomas Perchin* by indenture demiſed to *Thomas Gates* the father, a cottage at 5 *s.* a year, which was the full value, for 99 years. The leſſee held it till his death, and deviſed it to *Thomas Gates* his ſon. And the queſtion was, whether the ſon, as executor, being intitled to the term, ſhall gain a ſettlement by inhabiting in ſuch cottage? By the court; Where a man lives upon his own, is a caſe of a very tender nature, and the law will not unſettle him: Perſons to be removed under the ſtatute of *C.* 2. are thoſe that wander from place to place, and not thoſe who live upon their own eſtate: And adjudged, that he gained a ſettlement. *Seſſ. C. V.* 1. 200. *Str.* 983.

E. 3 *G. South Sydenham* and *Lamerton*. A perſon poſſeſſed of a leaſe for years dies inteſtate; if the next of kin ſhall be ſaid in law to be ſettled there, was the queſtion: It was held not; he has only a right, which he muſt purſue by taking out letters of adminiſtration, and no right is veſted in him till that is done. *Caſ. of S.* 103.

T. 10 *G.* 2. *Faringdon* and *Widworthy*. The pauper ſettled at *Faringdon*, removed to *Widworthy*, and lived there with his father in a cottage houſe of 30 *s.* a year, working as a day labourer. The father died inteſtate, poſſeſſed of the ſaid cottage for the reſidue of a term, determinable on lives, leaving the pauper and another ſon. The pauper's brother took his diſtributive ſhare of his father's eſtate in goods, and the pauper himſelf, after the father's death, continued in the cottage for 5 or 6 years, until the leaſe was determined: After which, and ſince the making out the order for his removal, he took out adminiſtration to his father. And the ſeſſions quaſhed the ſaid order, adjudging him to be ſettled at *Widworthy*. But by the court, He had gained no ſettlement at *Widworthy* at the time of making the original order, becauſe he then was plainly removable, as he had not taken out the adminiſtration. And quaſhed the order of ſeſſions. *Andr.* 4.

M. 4 *G. Murſley* and *Granborough*. Sir *John Forteſcue* demiſed a cottage of 30 *s.* a year, to one *Eden* for 99 years, reſerving 12 *d.* rent: *Eden* aſſigns the term to one *Gadden* in truſt for his wife for life, and then in truſt for his ſon, during the remainder

mainder of the term: The ſon dies, and leaves a wife, who as adminiſtratrix to her huſband became intitled to this term, and ſhe grants this cottage for 24 years, excepting two rooms, in which two rooms ſhe lives, and marries one *John Chappel*. The queſtion was, whether *Chappel*, as huſband of an adminiſtratrix, who was intitled to the truſt of a term only, and being intitled to a chattel in another's right only, was removeable by the 13 & 14 *C.* 2. And by the court, he is not: this is not a taking of a tenement under 10*l.* a year, for the 12*d.* is not reſerved as a rent, but only an acknowledgment uſually paid on long leaſes. The caſe of a copyhold is ſtronger than this, for that is but an eſtate at will. To ſtrip the man of his own, is the way to make him chargeable, for he may not be able to let it. Therefore the orders which adjudged this to be no ſettlement were quaſhed. *Str.* 97. *Seſſ. C. V.* 1. 122.

M. 11 *G. Aſhbrittle* and *Wyley*. A poor man built a cottage, upon the waſte belonging to my lord *Pembroke*, without his licence, who never offered to diſturb the man in his poſſeſſion, and he lived in this cottage for 30 years, and by his will left 3 guineas in the hands of his executors to purchaſe this cottage of my lord *Pembroke*. Upon his death, *Elizabeth* his only child, and heir at law, entred into the cottage, and after married one *Barrow*, and they lived in the cottage, and were in quiet poſſeſſion for three quarters of a year, and then ſold it. The queſtion was, whether the daughter, and her huſband *Barrow*, had gained a ſettlement by virtue of this inhabitancy, in the pariſh of *Wyley*, in which their cottage was. Mr. *Reeve* argued, that this inhabitancy gained no ſettlement: The cottager was a diſſeiſor, and had no right to build upon the waſte, and was at any time removable by the lord of the waſte, and if he might have been removed within 40 days, his long poſſeſſion ſhall give him no title; for he muſt only be conſidered as a tenant at will, and conſequently his continuance upon the cottage, tho' never ſo long, could give him no ſettlement: and if the cottager had no right of ſettlement, none claiming under him ſhall be in a better condition. The ſtatute of the 31 *El.* prohibits the building of cottages, therefore the erection of one is unlawful, and ſhall have no privilege or encouragement. I admit if one inhabits by virtue of a leaſe, or other good title, for 40 days, he gains a ſettlement. But the inhabitancy in this caſe was without any good title, and conſequently can gain no right of ſettlement. Theſe objections were anſwered by the court, who held it clearly to be a good ſettlement. And tho' it was further objected, that the cottager himſelf was ſenſible he had no right, by his deviſing money for the purchaſe of a term under the lord of the waſte, yet it was over-ruled. And by all the court it was held, that when a man hath ſuch a poſſeſſion as he cannot be removed from, and hath enjoyed that poſſeſſion forty days, he thereby gains a ſettlement; and that is the reaſon why a copyholder or leſſee for years gains a ſettlement by an inhabitancy for 40 days; for in thoſe caſes, the juſtices of the peace cannot determine his right: this preſent caſe is very ſtrong; for the 30 years poſſeſſion of the cottager, without interruption, would have

been a good title in an ejectment; and for that reaſon the juſtices of the peace cannot determine his title. It appears upon the face of the order, that the cottager had a good title in ejectment, and in any caſe but in a real action. Lord Ch. J. *Raymond* ſaid, he had known recoveries upon a 20 years quiet poſſeſſion, and 20 years poſſeſſion is a title to a plaintiff in ejectment as well as to a defendant. After ſo long a poſſeſſion as this, it ſhall be preſumed that the cottager had a licence to erect the cottage; but this caſe goes further, for beſides the 30 years quiet poſſeſſion of the cottage, here is a deſcent caſt upon the daughter who was heir to the cottager, and *prima facie* it is an inheritance in the daughter, and an eſtate by diſſeiſin is in law a good eſtate, and a fee ſimple, till it be defeated. Wherefore all the court held, that the juſtices had no juriſdiction in this caſe; for they could not examine into the title to the land. And the ſettlement in the pariſh of *Wyley* was adjudged to be good. *Seſſ. C. V.* 2. 115. *Str.* 608.

Purchaſe under 30*l.*

(2). But there is one exception to all that hath been ſaid concerning a perſon's being ſettled by living upon his own eſtate; and that is, in the caſe of a purchaſe under the value of 30*l.* which is made by act of parliament, 9 *G. c.* 7. and is thus:

After *Mar.* 25. 1723, *No perſon ſhall be deemed to acquire any ſettlement in any pariſh or place, by virtue of any purchaſe of any eſtate or intereſt in ſuch pariſh or place, whereof the conſideration for ſuch purchaſe doth not amount to the ſum of* 30 l. bona fide *paid, for any longer or further time, than ſuch perſon ſhall inhabit in ſuch eſtate, and ſhall then be liable to be removed to ſuch pariſh or place, where he was laſt legally ſettled before the ſaid purchaſe and inhabitancy therein.*

The ſum of 30 l. bona fide *paid*] *E.* 13 *G. St. Paul's Walden* and *Kempſton*. There was a ſpecial order ſtated at ſeſſions. A perſon purchaſed a copyhold tenement in *St Paul's Walden*; which with the fine, and fees paid to the court, amounted to 30*l.* and it appeared by the ſame order, that the officers of the pariſh of *Kempſton* had given him 40*s.* towards paying his fine and fees. Therefore it was inſiſted, that this was fraudulent, and not a good purchaſe within the ſtatute, ſufficient to gain a ſettlement. But by the whole court; We cannot take notice of its being fraudulent, unleſs the juſtices had adjudged it ſo. And the order was confirmed. *Foley* 238.

E. 8 *G.* 2. *Tedford* and *Waddington*. On a ſpecial order of ſeſſions it was ſtated, that *Francis Gill* contracted for the purchaſe of a houſe in *Waddington*, for 39*l.* and paid 9*l.* out of his own money, and the remaining 30*l.* was by his order paid by another perſon, to whom the premiſſes were mortgaged for it; that he had lived upon it four years, when the mortgage was foreclоſed, and he turned out: and the queſtion being, whether he had gained a ſettlement hereby, the ſeſſions adjudge that this was a fraudulent purchaſe, and conſequently no ſettlement gained thereby. But by the court, The order muſt be quaſhed: the purchaſe money by the ſtatute need only be 30*l.* and the advancing the money by another, makes no alteration. And the fact being ſpecially ſtated,

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we can judge as well as the ſeſſions, whether it be fraudulent or not. The circumſtance of his continuing four years, ouſts all preſumption of fraud. *Str.* 1014. *Seſſ. C. V.* 2. 164.

H. 15 *G.* 2. *Cotleigh* and *Stokeland.* An acre in *Cotleigh*, wherein a perſon had a leaſe for lives, was mortgaged to the pauper for 15*l.* When the mortgagor died, there was two years intereſt due to the pauper, and he alſo owed 18*l.* 10*s.* to the pauper by bond and ſimple contract. And it was agreed between the widow and the pauper, that he ſhould adminiſter, and take all but the houſhold goods; which he did. And the ſeſſions having held, that his taking to this acre, and living on it 8 years, did not gain a ſettlement under the act, which requires a *bona fide* payment of 30*l.* The court now quaſhed the order, it being to all intents of law and equity the ſame as actual payment of the conſideration money. *Str.* 1162.

2. How far a certificate perſon ſhall gain a ſettlement by an eſtate of his own, notwithſtanding the aboveſaid ſtatute of the 9 & 10 *W.*

Whether a certificate perſon may gain a ſettlement by reſiding on his own eſtate.

E. 5 *G. Burclear* and *Eaſtwoodhay. Abraham Hacket* comes with a certificate into the pariſh of *Eaſtwoodhay*, and afterwards marries one *Sarah Smith.* Her father ſurrenders to her a copyhold eſtate of 20*s.* a year, and ſo the huſband had it in her right. By the court; The man has gained a ſettlement in *Eaſtwoodhay*; for a man cannot be turned out of his own, be it never ſo ſmall. And by *Forteſcue* J. the party here could not be removed; and not removable, and gaining a ſettlement are the ſame thing. Then it was objected, that the perſon being a certificate perſon, he gains no ſettlement, unleſs he rents a tenement of 10*l.* a year, or exerciſes an annual office; and that ſtatute being an explanatory act, is not it ſelf to be explained, and conſequently cannot be taken farther than the words. But by the court, This is not an explanatory act, but a new law, and muſt therefore receive a liberal conſtruction. The exceptions in the ſtatute prove this caſe, being a caſe more reaſonable, than either that are there mentioned; and the parliament never intended to put a certificate man in a worſe condition than another perſon. *Caſ. of S.* 121. *Str.* 163.

H. 16 *G.* 2. *K.* and *Stansfield.* If an eſtate deſcends to a certificate perſon, it gains him a ſettlement, becauſe it is by operation of law, and not by an act of his own; and as the ſtatute hath been laid open in caſes of deſcents, it ought to be ſo in caſes of purchaſes. And by *Lee* Ch. J. the ſtatute of the 8 & 9 *W.* hath received a liberal conſtruction; and hath been held to gain a ſettlement, both in deſcents, and deviſes, and purchaſes. On the 13 & 14 *C.* 2. the conſtruction has been, that let the value be what it will, a perſon cannot be removed from his own; and it ſeems to be the ſame upon the certificate act, for if he is not removeable within the 13 & 14 *C.* 2. he is not removable on the certificate act. *Seſſ. C. V.* 1. 316.

T. 16 *G.* 2. *Deddington* and *Dunfrew.* A certificate man purchaſed a houſe for 42*l.* lived in it many years, then ſold it, and becoming chargeable was ſent back. It was inſiſted, that the

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9 & 10 *W.* c. 11. ſaying, *a certificate man ſhall gain a ſettlement by no act whatſoever, unleſs the taking* 10 l. *a year, or ſerving on annual office*, this man, notwithſtanding the purchaſe, might be ſent back: and it was ſaid to differ from the caſe of *Burclear* and *Eaſtwoodbay*, where the ſurrender of a copyhold to the certificate man's wife was held to gain him a ſettlement; becauſe there it was not his own act (as this purchaſe is) but it came to him by operation of law. But the court did not think this a ſufficient diſtinction, and ſaid a purchaſe was in its nature an excepted caſe; and his ſelling it afterwards made no alteration. *Str.* 1193.

H. 6 *G. Ivinghoe* and *Stonebridge.* A certificate man made a purchaſe in *Stonebridge*, and his *apprentice* lived with him for above 40 days upon the purchaſed eſtate there: And by the court, the apprentice thereby gained a ſettlement; for when a certificate man maketh a purchaſe, he immediately ceaſeth to be there in nature of a certificate man, and becomes a ſettled inhabitant, and conſequently his apprentice with him. *Str.* 266.

Obſervation. Upon this laſt occaſion of mentioning certificates, it is obvious to obſerve from all that hath been ſaid thereupon, that there are divers good reaſons for requiring certificates with perſons coming to ſettle in any place; namely, that perſons reſiding under them can gain no ſettlement, neither by apprenticeſhip, nor by ſervice, nor by giving notice, nor by paying pariſh rates; that they can ſettle neither apprentices nor ſervants; that if they become chargeable, it is certainly known whither to remove them, and the pariſh ſhall be paid for the removal, and for their maintenance in the mean time; and that if they fall ſick, and cannot be removed, the pariſh which gave the certificate muſt maintain them: none of all which can be without a certificate. Which reaſons will hold proportionably for pariſhes not granting certificates in ordinary caſes; for it is far more than an equal chance, but that they will have them again, and in a worſe condition.

3. How far reſidence upon a man's own eſtate is neceſſary, to gain him a ſettlement.

Reſidence neceſſary. (1) *H.* 8 *W. Riſelip* and *Harrow.* By *Holt* Ch. J. Having land in a pariſh will not make a ſettlement, but living in a pariſh where one has land, will gain a ſettlement without notice; for the act never meant to baniſh men from the enjoyment of their own lands. 2 *Salk.* 524.

M. 8 *G. Wokey* and *Hinton Blewet.* A perſon ſettled at *Hinton Blewet*, had an eſtate deſcended to him in *Wokey*; whereupon the juſtices ſend him thither as to the place of his laſt ſettlement. But by the court, The order muſt be quaſhed; for it is no ſettlement nor inhabitation, though if he ſhould go thither he could not be removed: it may be a great injury to ſend him away from a good trade at *Hinton Blewet*, to perhaps half an acre of land, wherein he has but a term. *Str.* 476.

E. 8 *G.* 2. *K.* and *St. Mary Berkhamſtead.* The huſband ran away, and it was not known whether he was alive or dead; in the mean time the wife had a houſe deviſed to her in *Northchurch*, and ſhe and her children went to live there. The queſtion was,

Whether by continuing therein 40 days, they gained a ſettlement. The court ſeemed to be of opinion, ſince it was not known that the huſband was dead, he muſt be ſuppoſed to be alive, and in that caſe that the wife could not gain a ſettlement for her ſelf, but muſt follow the huſband's ſettlement; and that the huſband having not reſided 40 days at *Northchurch*, in the ſaid houſe unremovable, he hath gained no ſettlement there. *Seſſ. C. V.* 2. 182.

(2) *M.* 12 *G.* 2. *Souton* and *Sidbury*. A perſon who lived with his family at *Souton*, having an eſtate at *Sidbury* which the tenant gave up, went thither, and lodged in an alehouſe as a gueſt, without having any certain room there, and ſtaid from *November* till *April*, but ſometimes went to *Souton* where his children and family were, and to other places as his occaſions required, poſſeſſed and managed his eſtate, by repairing fences, hoeing turnips, and the like. The queſtion was, Whether ſuch inhabiting, and not upon the eſtate, would gain a ſettlement? And the court were of opinion it would, and that it made no difference whither it were in his own houſe or in an alehouſe; for being in the ſame pariſh, he could not be removed. *Seſſ. C. V.* 2. 150. Reſidence on the ſame eſtate, not neceſſary.

(3) Another queſtion was moved in the ſame caſe, Whether ſince he did not reſide there for 40 days together, but for more than 40 days in the whole, ſuch reſidence ſhall gain a ſettlement? And by the whole court; It is not neceſſary upon the ſtatute, that the reſidence ſhould be for 40 days ſucceſſively. *Seſſ. C. V.* 2. 150. *And.* 345. Reſidence for 40 days together not neceſſary.

And, *T.* 13 *G.* 2. *St. Neot*'s and *St. Clere*. A perſon at *St. Neot*'s was hired and ſerved a year; and then he returned to *St. Clere*, where he had a joint freehold with his mother, and lived there backwards and forwards, but not 40 days at a time, but more in the whole, and afterwards ſold the ſame. The queſtion was, Whether here was any ſettlement at *St. Clere?* By the court; This depends on the ſtatute of the 13 & 14 *C.* 2. and 40 days inhabitancy together is not requiſite, and the man was well ſettled at *St. Clere*, for there was a time, when by reſidence of 40 days he could not be removed from thence. *Seſſ. C. V.* 1. 318. *Str.* 1116.

AND now upon the whole, having gone thro' this ſubject of ſettlements, and I hope with ſome perſpicuity and exactneſs; the firſt reflection which will ariſe in the mind of every reader, I think, will be, to admire the ſubtilty of human wit: It was the obſervation of a wiſe king of *Iſrael* long ago, that god made man upright, but they have ſought out many inventions. A ſtranger to our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the conſtruction of one ſhort act of parliament, and one ſingle clauſe of that one ſhort act, and which upon the face of it doth not appear to carry any conſiderable difficulty. Concluſion.

The next thing that occurs, is to reverence the wiſdom of the court of king's bench, in clearing up thoſe difficulties, and eſtabliſhing the ſenſe of the law upon ſolid and firm grounds.

Nevertheleſs it is obvious to remark one defect of the law, which runs thro' this whole courſe of ſettlements, and that is, with regard to the ſettlement of *Scotchmen* and *Iriſhmen* in *England*; although the caſe before mentioned of *St. John's Wapping* and *St. Botolph's Biſhopſgate*, *H.* 28 *G.* 2. ſeemeth at laſt to have ſettled the matter with regard to their wives being *Engliſh* women, and their children born in *England:* If it ſhall be determined that they may gain ſettlements in *England* as *Engliſhmen* may do, then it ſeemeth but equal, that when likely to become chargeable, they may be removed to *Scotland* or *Ireland*, as other inhabitants to their lawful place of ſettlement, although they ſhould not become vagrants, and of conſequence actually chargeable. Or if not ſo; then, as they can bring no legal certificates from *Scotland* or *Ireland*, it ſeemeth but equal that they ſhould be put upon the ſame footing with *Engliſhmen* having certificates, and conſequently not in a condition to gain ſettlements otherwiſe than as certificate men may do.

But excepting in this one inſtance, and ſome very few others which have been mentioned, and which one ſhort act of parliament would rectify, the law ſeems now to be well ſettled as to theſe matters; and conſequently the diſputes about ſettlements cannot ſo much ariſe from the uncertainty of the law, as from the uncertainty of the facts upon that law: and this, from the nature of the thing, muſt always be uncertain, as depending upon the teſtimony of witneſſes, and thoſe alſo for the moſt part of the meaneſt of the people.

There hath been alſo another cauſe of much altercation, upon appeals againſt orders of removal, which ariſes from ſome defect in thoſe orders themſelves, or from ſome error in the method of proceeding in relation thereto: which comes next to be conſidered.

III. Of removals.

i. Order of removal in general.
ii. Order of removal of a certificate perſon.
iii. Appeal againſt the order of removal.

i. Order of removal in general.

The ſtatute of the 13 & 14 *C.* 2. *c.* 12. which hath been ſo often canvaſſed in treating concerning ſettlements, is not yet to be diſmiſſed by us, but will appear again under this head, in a new and a quite different light; as being that upon which all the orders of removal are or ought to be eſtabliſhed. And in this view, there have been as many caſes adjudged upon it, as in the other, altho' not altogether in ſo great a variety.

In treating of this ſubject, we will firſt ſet forth the ſtatutes: Then the eſtabliſhed form of an order of removal thereupon: And then take the ſame in pieces orderly and diſtinctly, thereby

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to discover the several shelves and rocks upon which numberless orders have been shipwrecked.

It is true, the statute of the 5 G. 2. whereby errors in point of form may be amended at the sessions, hath in some sort remedied these defects; but that it may appear how such errors are to be amended, and as it will be better if the order be such as shall need no amendment, and as it still remains a doubt upon that statute, what shall be deemed matter of form, and what shall be deemed of the substance of the order, this method is not the less to be pursued upon that account.

By the 13 & 14 C. 2. *c.* 12. it is enacted as follows: *Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, it is enacted, That it shall be lawful, upon complaint made by the churchwardens or overseers of any parish, to any justice of the peace, within* 40 *days after any such person coming so to settle in any tenement under the yearly value of* 10 l. *for any two justices of the peace (one whereof is of the* quorum) *of the division where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices.* s. 1.

And if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, one justice may send him to the house of correction, there to be punished as a vagabond. s. 3. And by the 17 G. 2. *c.* 5. *All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding one month.* s. 1.

And if the churchwardens and overseers of the parish to which he shall be removed, refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of that division shall bind any such officer in whom there shall be default to the assizes or sessions, there to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. s. 3.

And by the 3 *W.* *c.* 11. *If the churchwardens or overseers of the parish or town to which the person shall be so removed, shall refuse or neglect to receive the said person, he or they so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) forfeit for each offence* 5 l. *to the use of the poor of the parish or town from which such*

perſon was removed, to be levied by diſtreſs, by warrant to the conſtable of the pariſh or town where ſuch offender dwells; and for want of ſufficient diſtreſs, the ſaid juſtice ſhall commit the offender to the common gaol for 40 days. 13 & 14 Car. 2. c. 12. s. 10.

Upon complaint made by the churchwardens or overſeers of any pariſh to any juſtice of the peace] By theſe words one juſtice alone hath cognizance of the matter, ſo far as concerneth the complaint only; and by virtue thereof may iſſue his warrant to bring the party before him in order to his examination; or he may iſſue his warrant, to bring the party before himſelf and another juſtice, in order to hearing and determining the complaint; for he himſelf alone cannot hear and determine, but only bring the matter into the courſe of being heard and determined by two juſtices: and therefore it is moſt uſual for the two juſtices originally to iſſue their joint precept to bring the party before them for that purpoſe. Nevertheleſs, if the party is willing, he may go voluntarily before the juſtices, at the requeſt of the overſeers, without any warrant at all.

The form of which warrants or precepts aforeſaid, where they are requiſite, may be to this effect:

Warrant of one juſtice for a perſon to be examined concerning his ſettlement.

Weſtmorland. { To the conſtable of ———.

FORASMUCH *as complaint hath been made before me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, by the churchwardens and overſeers of the poor of the pariſh of* ——— *in the county aforeſaid, that* A. P. *hath come to inhabit in the ſaid pariſh, not having gained any legal ſettlement therein, nor produced any certificate owning him to be ſettled elſewhere, and that the ſaid* A. P. *is likely to become chargeable to the ſaid pariſh of* ———. *Theſe are therefore to require you to bring the ſaid* A. P. *before me, to be examined concerning the place of his laſt legal ſettlement. Herein fail you not. Given under my hand and ſeal the* ——— *day of* ———.

Warrant of two juſtices in order to the adjudication.

Weſtmorland. { To———

FORASMUCH *as complaint hath been made before us* ——— *two of his majeſty's juſtices of the peace in and for the ſaid county, and one of us of the* quorum, *by the churchwardens and overſeers of the poor of the pariſh of* ——— *in the ſaid county, that* A. P. *hath come to inhabit in the ſaid pariſh, not having gained any legal ſettlement therein, nor produced any certificate owning him*

to

to be ſettled elſewhere, and that he the ſaid A. P. *is likely to become chargeable to the ſaid pariſh of* ———. *Theſe are therefore to require you to bring the ſaid* A. P. *before us, at the houſe of* ——— *in* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the afternoon of the ſame day, to be examined concerning the place of his laſt legal ſettlement, and to be further dealt withal according to law. Given under our hands and ſeals the* ——— *day of* ———.

It may alſo not be unfitting, eſpecially in caſes of doubt or difficulty, to give notice (if it may be) to the overſeers of the pariſh or place where the ſettlement is ſuppoſed to be, that they may attend, if they think proper, when the adjudication is made; which probably might prevent appeals oftentimes from ſuch adjudications and orders: Which notice may be to the effect following.

Summons to ſhew cauſe againſt an order of removal.

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* ——— *in the county of* ———, *and to every of them.*

This is to ſummon you, or ſome of you, to appear (if you ſhall ſo think proper) before ———, *and ſuch other his majeſty's juſtices of the peace for the ſaid county of* W. *as ſhall be at the houſe of* ——— *in* ——— *in the ſaid county of* W. *on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the afternoon of the ſame day, to ſhew cauſe why* A. P. *ſhould not be removed from the pariſh of* ——— *in the ſaid county of* W. *to your ſaid pariſh of* ———. *Given under* —— *hand*— *and ſeal*— *this* ——— *day of* ——— *in the year of our lord* ———.

And then the general form of an order of removal, as grounded upon the ſtatute of the 13 & 14 *C.* 2. above recited, may be thus:

The form of a general order of removal.

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* Orton *in the ſaid county of* Weſtmorland, *and to the churchwardens and overſeers of the poor of the pariſh of* Penrith *in the county of* Cumberland, *and to each and every of them.*

Upon the complaint of the churchwardens and overſeers of the poor of the pariſh of Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife,* Thomas *their ſon aged eight years, and* Agnes *their daughter aged four years, have come to inhabit in the ſaid pariſh of* Orton, *not having gained a legal ſettlement there, nor produced any certificate owning them or any of them to be ſettled elſewhere,*

elſewhere, and that the ſaid John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children are likely to be chargeable to the ſaid pariſh of* Orton; *We the ſaid juſtices, upon due proof made thereof, as well upon the examination of the ſaid* John Thomſon *upon oath, as otherwiſe, and likewiſe upon due conſideration had of the premiſſes, Do adjudge the ſame to be true; and we do likewiſe adjudge, that the lawful ſettlement of them the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *We do therefore require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome, or one of you, to convey the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof, at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Penrith, *to receive and provide for them as inhabitants of your pariſh. Given under our hands and ſeals the* ——— *day of* ——— *in the* ——— *year of the reign of his ſaid majeſty king* George *the ſecond.*

To the churchwarders and overſeers of the poor of the pariſh of Orton] If a place is extraparochial, and hath no overſeers, the juſtices cannot remove from thence, becauſe there are none neither to complain nor to convey; but the juſtices ought firſt to appoint overſeers, and then to remove. 2 *Salk.* 487. *Foley* 97, 98.

Of the pariſh of Orton *in the ſaid county of* Weſtmorland] The county in the margin is not ſufficient, but it muſt appear in the body of the order that the place is in ſuch county, either expreſly, or by ſome words of reference, as *in the ſaid county*, or *in the county aforeſaid.* Caſe of S. 151. Seſſ. C. V. 2. 181.

And to the churchwardens and overſeers of the poor of the pariſh of Penrith *in the county of* Cumberland] As the juſtices cannot ſend from an extraparochial place, unleſs they have overſeers, ſo neither can they ſend to an extraparochial place, which hath no overſeers, becauſe there are none to receive them. 2 *Salk.* 487. *Foley* 97, 98.

E. 1 *An. St. George's* and *St. Olave's.* The order was to convey one *Thomas Gill* to the pariſh of *St. Olave*, and it was directed, To the churchwardens and overſeers of the poor of the pariſh of *St. Olave.* Quaſhed: for they ought and can only order the pariſh officers where the intruſion is made, to make the removal. 2 *Salk.* 493.

Upon the complaint] *H.* 12 *G.* 2. *K* and *Harchy.* It was moved to quaſh an order of removal, becauſe it did not ſet forth any complaint made: And by the court, the objection is fatal, for the complaint is the foundation of the juſtices juriſdiction. *Andr.* 361.

Upon

Upon the complaint of the churchwardens and overseers of the poor] *E.* 1 *An. Weston Rivers* and *St. Peter*'s. Exception to an order of removal, in that it was said to be upon complaint only, and not of the churchwardens or overseers. By the court; This exception is fatal; for no one can disturb a man coming into a parish, but they that have authority to do it: A complaint from one not concerned is nothing; it may be the parish is willing to keep him. 2 *Salk.* 492.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton *aforesaid*] *M.* 9 *An. Spalding* and *St. John Baptist.* The order was, To the churchwardens and overseers of the poor of the parish of *Spalding*, and to the churchwardens and overseers of the poor of the parish of *St. John Baptist:* Whereas complaint hath been made by you——It was moved to quash the same for the uncertainty, because it did not say by which: But by *Parker* Ch. J. Sure that is well enough, for it is upon complaint of the right, if both complain. *Foley* 267.

Unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace] An order was quashed, because it did not appear that it was made by two justices: It was only, Whereas complaint hath been made unto us; without reciting their authority as justices. 5 *Mod.* 322.

Two of his majesty's justices of the peace] *M.* 4 *G. K.* and *Westwoodhay.* On complaint to one justice, two justices adjudge and remove; and it was held to be well: Otherwise, where one justice sets his hand to the order in the absence of the other. *Case of S.* 107. *Str.* 73.

T. 11 *G.* 2. *K.* and *Wykes.* It was held, that though the complaint may be to one justice, yet the examination ought to be by two, and those the same who sign the order of removal. *Str.* 1092.

Justices of the peace in and for the said county] *M.* 12 *An. Q.* and *Uplin.* The order was quashed, because it did not say that they were justices of the peace, but only justices of the county. *Cases of S.* 27.

In and for the said county] *M.* 13 *G. K.* and *Owlton.* Exception was taken to an order, for saying——unto us two of his majesty's justices of the peace *in* the county aforesaid; for that by this it appears only that they lived in the county, and not that they were justices *for* that county: And the court held this to be a fatal exception, and quashed the order for that cause. *Sess. C. V.* 2. 76. 2 *Salk.* 474.

The said county] *M.* 8 *W.* It was objected to an order, that it did not appear thereby that the justices were of the *division*, which is required by the statute: But this objection was overruled, for that the statute therein is only directory. 2 *Salk.* 473.

And one of us of the quorum] Abundance of orders formerly have been quashed, for not setting forth, that one of the justices was

was of the *quorum*; but now by the 26 *G.* 2. *c.* 27. no order ſhall be ſet aſide for that defect only.

But if in fact neither of the juſtices ſhall be of the *quorum*, it ſeemeth nevertheleſs that ſuch order ſhall not be good; for altho' the ſtatute doth not require that the order ſhall ſet forth one of the juſtices to be of the *quorum*, yet it doth require that one of them ſhall actually be ſo. And there are many towns corporate whoſe charters have no *quorum*, but only do conſtitute certain of the chief officers juſtices to keep the peace, without giving them power to hear and determine felonies, treſpaſſes, and other miſdemeanors: That is to ſay, they have the power which the juſtices of the county at large have by the firſt aſſignment in the commiſſion of the peace, which is the ſame that the conſervators of the peace had by the common law, and is all that the juſtices of the peace had at firſt by their commiſſion. The power of hearing and determining, which they have now by the ſecond aſſignment in the commiſſion, and which only implies a *quorum*, is a ſeparate and diſtinct authority, and was ſuperadded to the former ſome years after the inſtitution of the office of juſtices of the peace; and this power the juſtices in divers towns corporate have not, and conſequently can have no *quorum*.

E. 6 *G.* *Albright* and *Skipton.* Upon appeal from an order of removal made by two juſtices (one of the *quorum*); the ſeſſions, reciting that they had peruſed the charter of *Albright*, and it not appearing thereby that the two juſtices were either of them of the *quorum*, therefore they quaſhed the order of removal. But by the court, The order of ſeſſions muſt be quaſhed; not for want of any power in the ſeſſions to look into the juriſdiction of the two juſtices, for that they certainly have; but becauſe that want of juriſdiction is not ſufficiently alledged; ſince they might have a juriſdiction, though it did not appear upon the charter of *Albright*. The ſeſſions ſhould have ſaid in general, that it appeared to them, that the two juſtices were neither of them of the *quorum*, and that would have been good cauſe to quaſh the order of the two juſtices. *Str.* 300.

That John Thomſon] *M.* 11 *An. Southwell* and *Needwell.* Whereas a certain woman hath intruded, Theſe are therefore to require you to convey: Objection, It is not ſaid who this woman was. And by *Parker* Ch. J. You muſt either name her, or ſay a certain woman unknown. *Caſ. of S.* 57.

T. 10 *An.* Caſe of *Newington.* Whereas ſuch a perſon hath intruded into the pariſh, and is likely to become chargeable; Theſe are therefore to require you to remove him *with three children.* Quaſhed as to the children, for they have removed more than is complained of. *Caſ. of S.* 45.

Mary *his wife*, Thomas *their ſon*] *H.* 10 *W. Johnſon*'s caſe. Order to remove a man and *his family*, not good; becauſe too general: for ſome of the family might not be removable. 2 *Salk.* 485.

M. 5 *G.*

M. 5 *G. Beaton* and *Sifton.* Order for removal of *Thomas Block* and his family: Upon the firſt reading, quaſhed as to the family, becauſe too general. *Str.* 114.

T. 9 *W. Flixton* and *Roſton.* Order to remove *Jane Smith* and her five children; Quaſhed as to the children, for the uncertainty; becauſe it neither tells the names nor ages of the children: for ſhe might have more children than five, and ſome of thoſe five might have gained ſettlements. *Seſſ. C. V.* 1. 11. *Foley* 278.

T. 8 *G. Hobey* and *Kingsbury.* Two juſtices adjudging the ſettlement of the huſband to be at *Kingsbury*, and that he is likely to become chargeable to *Hobey*, ſend him, his wife, and ſon of one year old, to *Kingsbury*; And whether this was good as to the wife and child, was the queſtion: And it was held to be well enough; and the order was confirmed. *Str.* 527.

Thomas *their ſon aged* 8 *years, and* Agnes *their daughter aged* 4 *years*] *M.* 9 *An.* Q. and *Middleham.* Order to remove a child, of the age of ten years, to *Middleham*, becauſe *Middleham* was the place where his father was laſt legally ſettled. Quaſhed by the court; for that there was no adjudication that *Middleham* was the place of the child's laſt legal ſettlement, and at that age it might have gained a ſettlement. *Foley* 271.

T. 10 *An. Ringmore* and *Petworth.* The order was, Whereas ſuch a perſon and his 3 children are likely to become chargeable, and their laſt legal ſettlement was at *Ringmore.* It was moved to quaſh the ſame, becauſe the childrens ages were not ſet forth. But by the court; It is not neceſſary in this caſe; for the order ſays, they were laſt legally ſettled in *Ringmore*, and then no matter what their ages are. *Caſ. of S.* 41.

H. 11 *G. K.* and *Trinity.* This rule was laid down; Every order that concerns the removal of a father and his children, ought to ſhew the ages of the children, for they may have gained a ſettlement in ſome other right, as by being apprentices or ſervants; therefore their age ought to be ſet forth, that it may appear to the court, that by reaſon of their infancy they have not gained any ſettlement in their own right, but have only a relative ſettlement from their father. Seven years is an age that the court will preſume a child could gain a ſettlement at, in his own right; but if it appears upon the order that the child was above 7 years old, the order muſt ſet forth, that ſuch child hath not gained a ſettlement in his own right. *Seſſ. C. V.* 2. 74.

Have come to inhabit] *E.* 12 *An.* Q. and *Graffham.* The order ſets forth, that *Henry Tate* and his wife do *endeavour* to intrude into the pariſh. And quaſhed by the court; for that he cannot be removed out of the pariſh, unleſs he hath come into it. *Caſ. of S.* 16.

Not having gained a legal ſettlement there] *E.* 1 *An. Wotton Rivers* and *St. Peter*'s. Exception to an order of removal, that it was not ſaid, that the poor perſon did not rent a tenement of 10 *l.* a year, according to the words of the act. As to which, *Holt* Ch. J. ſaid, that *before* the 13 & 14 *C.* 2. two juſtices did remove by conſequence of law, upon the 43 *El.* becauſe that ſtatute makes

proviſion,

proviſion, that every pariſh ſhall maintain its own poor; therefore the juſtices conſidered who were properly the poor of a pariſh, and they were held to be ſuch as were there ſettled a convenient time, which was thought a month, ſo that a month's abode made an inhabitant. But there being ſeveral doubts made about this matter, therefore to ſettle the ſame, the ſtatute of the 13 & 14 *C.* 2. was made; upon which ſtatute this queſtion now ariſes, *viz.* Since the power to remove a poor perſon being not wholly founded on the ſtatute of the 13 & 14 *C.* 2. but on the law as it was before the making of that ſtatute, whether ſuch an order as would ſerve for a removal before that ſtatute, would ſerve ſince, or whether the ſtatute obliges the juſtices to alter the form of their orders; and this depends upon the operation of the ſtatute, whether it was by way of juriſdiction or reſtriction; and upon ſearching of precedents by the ſecondary he found, that the orders before this ſtatute were all without this clauſe, and ſo were the orders ſince; whereupon, as to this point, the order was held good: And if the fact is, that the perſon removed doth rent a tenement of 10*l.* a year, it ought to be remedied by way of appeal. 2 *Salk.* 493. 3 *Salk.* 254.

Nor produced any certificate owning them or any of them to be ſettled elſewhere] For by the 8 & 9 *W. c.* 30. If they have a certificate, they cannot be removed for being likely to be chargeable, nor until they do actually become chargeable. But if the order ſet forth that they are actually become chargeable, then this clauſe therein, concerning the certificate, is ſuperfluous.

Likely to become chargeable] *Scrivenham* and *St. Nicholas.* Order, not ſaying that the party was likely to become chargeable: Quaſhed. 3 *Salk.* 255.

H. 4 *G. Teelby* and *Willerton.* Order, Whereas complaint hath been made, that *Anne Stamp may* become chargeable,—We adjudge the ſame to be true. Quaſhed; for that the act enables the juſtices only to remove perſons likely to become chargeable, and not perſons that poſſibly may be chargeable, for no one can ſay who may not be chargeable; and there is as much difference in this caſe between *may* and *likely*, as between a poſſibility and a probability. *Seſſ. C. V.* 1. 117. *Str.* 77.

T. 10 *An.* Order, Whereas ſuch a perſon will become chargeable, if permitted to abide. Objected, this is uncertain; it may be ten years hence; Quaſhed. *Caſes of S.* 39.

Note; It doth not appear from any adjudged caſe, that upon appeal it was ever controverted, whether the perſon was or was not likely to become chargeable. And in the caſe of *South Sydenham* and *Lamerton*, *T.* 3 *G.* Mr. J. *Eyre* ſaid, that by the words of the act, living on a tenement under 10*l.* a year, and likely to become chargeable, are convertible terms. *Seſſ. C. V.* 1. 115.

Nevertheleſs, complaint muſt firſt be made, that the party is likely to become chargeable, before the juſtices can remove. And, in the caſe of *K.* and *Wykes*, *T.* 11 *G.* 2. an information was granted againſt a juſtice, for taking the examination of a perſon in

in order for his removal, upon the officers complaining, that he endeavoured to gain a settlement in the parish contrary to law; without complaining at the same time, that he was likely to become chargeable. *Andr.* 238.

To the said parish of Orton] *T.* 10 *An.* 2. and *Bradford*—— Likely to become chargeable, but not said to what parish: Quashed. *Cases of S.* 40.

But in the case of *K.* and *Witham super montem*; *H.* 5 *G.* By the court: *It appearing to us that he is likely to become chargeable*, is sufficient, without saying *to the parish from* whence removed; for it is not to give a jurisdiction, but only the reason of the judgment. *Str.* 142.

And, *M.* 7 *G. Maidstone* and *Dething*. It was held well enough in an order of removal, to shew a complaint that the party is come into the parish of *Dething*, and is likely to become chargeable, without saying farther, *to the said parish of* Dething. *Str.* 393

And, *E.* 12 *G. K.* and *Leefield*. An order of removal, whereby a person was adjudged likely to become chargeable, without saying, *to the parish from whence removed*, was confirmed. *Str.* 698.

Upon due proof made thereof, as well upon the examination &c.] *H.* 13 *G* 2. *K.* and *Fisherton Dallener*. Opon *due consideration* was held to be sufficient; for that due consideration implies a due examination. *Sess. C. V.* 2. 45.

Examination] *T.* 12 *W. Ware* and *Stanstead Mount Fitchet*. Exception to an order, for that it was said, it appears upon examination *before us or one of us*. By the court; The examination ought to be before both, because both are to make the judgment of removal. And *Gould* J. said, the statute directed, and the practice was, to make *complaint* to one justice, and he grants his warrant to bring the poor man before two justices, and then they two examine and remove. 2 *Salk.* 488.

Examination of the said John Thomson] *T.* 11 & 12 *G.* 2. *K.* and *Wykes*. A person ought to have notice, and be heard before he be removed: for he may produce a certificate, or give other sufficient security, or shew cause otherwise why he ought not to be removed; especially as he himself perhaps, by the removal, is likely to be the greatest sufferer: and therefore natural justice requires, that he be not condemned unheard. *Andr.* 238.

Of the said John Thomson *upon oath*] In the case of *K.* and *Wykes* last abovementioned, one justice took the examination, and other two justices removed upon that sole examination, and in the order did set forth that the party was examined before themselves; for which, and for not summoning the party before them, an information was granted against the two justices. *Andr.* 238.

Upon oath] *H.* 10 *G. Munger-hunger* and *Warden*. Exception to an order, for that it is said to be made upon *due examination*, without saying *upon oath*: By the court, This is sufficient; for where

where it is ſaid to be made upon due examination, it ſhall be intended to be upon oath. *Seſſ. C. V.* 2. 40.

Do adjudge the ſame to be true] *T.* 13 *W. Suddeſcomb* and *Burwaſh.* Order quaſhed, becauſe it was only ſaid to be complained by the officers, that the perſon removed was likely to become chargeable, but not adjudged ſo by the juſtices. 2 *Salk.* 491.

H. 4 *G. K.* and *Weſtwood.* Order quaſhed, becauſe the juſtices only ſay, *We order him to be removed to ſuch a place, as the place of his laſt legal ſettlement,* without adjudging that to be the place. *Str.* 73.

T. 3 & 4 *G.* 2. *K.* and *Minchin-Hampton.* Order, Whereas complaint is made to us, that ſuch a perſon is now become chargeable, we do adjudge that the laſt place of his lawful ſettlement is in the pariſh of *Minchin-Hampton.* Objected, that here is no adjudication that he is likely to become chargeable; and quaſhed for this reaſon. *Seſſ. C. V.* 2. 93.

T. 4 *G. Stallingburgh* and *Haxhay.* On examination we *do believe* the ſame to be true. Quaſhed; for a man may believe a thing on uncertain evidence. *Seſſ. C. V.* 1. 131.

E. 10 *An. Waltham Magna* and *Parva.* Whereas ſuch a perſon is likely to become chargeable, as we are *credibly informed,* theſe are therefore to require you to remove: Quaſhed, for that here is no adjudication that he is likely to become chargeable; and this is only the belief of another. *Caſes of S.* 38.

And we do likewiſe adjudge that the lawful ſettlement] *E.* 9 *W. Bury* and *Arundel.* Whereas complaint hath been made unto us, that *Jacob Duckin* with his wife and children, came from his place of abode and laſt legal ſettlement in *Bury* to *Arundel,* We therefore require you to remove: Naught; for there is no adjudication of the juſtices which was his laſt legal ſettlement, but only a complaint that *Bury* was, which doth not appear whether true or falſe. 2 *Salk.* 479.

T. 12 *An. Eglium* and *Hartley-Wintly.* An order adjudges that a man was ſettled at ſuch a place; and therefore they remove his widow thither: Quaſhed; for that here was no adjudication of the widow's ſettlement, and ſhe might have gained a ſettlement after the death of her huſband. *Seſſ. C. V.* 1. 45.

T. 3 & 4 *G.* 2. *K.* and *Warnhill.* Adjudication that the *laſt legal place* of the pauper is at *Warnhill* in the county of *Berks.* Quaſhed; for that this is no adjudication of the *ſettlement. Seſſ. C. V.* 2. 92.

M. 3 *An.* It was held, that *legal ſettlement* and *laſt legal ſettlement* are the ſame thing; becauſe by every new ſettlement the precedent is diſcharged. 2 *Salk.* 473.

M. 12 *An. St. Mary Ottery* and *St. Mary*'s. The juſtices in their order ſay, that the poor perſon was laſt ſettled there *according to their knowledge:* By the court; They ſhould have ſaid, he was laſt ſettled there; an order is a judgment, and muſt be certain and poſitive: he might have been ſettled elſewhere, and they not know it. Quaſhed. *Caſes of S.* 32.

And provide for them] The ſtatute directs, that the place whither they are ſent ſhall receive and *provide* for them; for which reaſon the ſame is inſerted here in the order: but it ſeemeth that when the removal is into another county, thoſe words are unneceſſary, becauſe ineffectual; for that the juſtices in one county cannot take order for the relief of poor perſons in another county.

It may be proper here to ſubjoin one remarkable caſe of a removal, wherein there was no adjudication of the laſt ſettlement, and where the place removed to was not the place of the laſt ſettlement, and yet the order as to that was held to be good. *K.* and *Banbury*. A conſtable without a warrant brought a child from *Broughton* to *Banbury*; and two juſtices of *Banbury* made an order reciting the fact, to return the child to *Broughton*, there to be provided for according to law. The court held the order good, for returning the child to the wrong doers; and therefore that part of the order was affirmed; but it ought not to be ſaid, to be there provided for; but they are to be left to take their courſe according to law; therefore that part was quaſhed. *Comb.* 372. But it is plain that this removal was not in purſuance of the ſtatute of *C.* 2. but ſeems rather to have been by the conſtructive power of removing which the juſtices had upon the ſtatute of the 43 *El.*

So much concerning the uſual form of an order of removal: And after ſuch order and adjudication is made, that the ſame may appear upon record afterwards, in order to charge the pariſh, it was ſaid by *Holt* Ch. J. (1 *Salk.* 406.) that the moſt regular way for the juſtices to proceed, is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overſeers, to convey the perſons to the pariſh to which they ought to be ſent, and deliver in the record by their own hands into court the next ſeſſions, to be kept there amongſt the records, to charge the pariſh. But how ſuch record ſhall charge the pariſh is not perhaps very evident; unleſs it ſhall appear likewiſe, that a removal was made in purſuance of ſuch order: otherwiſe, how ſhall the pariſh be charged by an order which poſſibly they knew nothing of, and conſequently could have no opportunity to appeal againſt. It is uſual in ſome places, for the overſeers who made the removal, to bring the original order to the next ſeſſions, and there make oath, that they removed the party in purſuance of ſuch order, and then if there appear to be no appeal againſt it, the order is confirmed by the court, and filed amongſt the records. And altho' ſuch confirmation is merely void, becauſe the ſeſſions have no juriſdiction therein, unleſs in the caſe of appeal, which here is not; yet ſuch confirmation is alſo ſuperfluous and needleſs, for the order not appealed againſt is final without more. And as ſuch order is a record of it ſelf, and contains in it the adjudication of the juſtices, it ſeemeth that the court may record thereupon likewiſe, that no appeal was made, for in that caſe they are the proper judges whether an appeal was made or not. But ſtill it ſeemeth, that unleſs it be upon appeal, they have no power to inquire concerning the removal, for that

as to them is extrajudicial: But the juſtices, who made the order, have a right to ſee it executed; and therefore they may inquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next ſeſſions, and the court thereupon recording likewiſe that no appeal was made, in ſuch caſe perhaps the pariſh may be concluded.

ii. Order of removal of a certificate perſon.

As it will appear from what hath been ſaid under the former head, concerning the removal of poor perſons having no certificate, that in moſt of the books there are many bad orders; ſo it will appear alſo from thence, and from what will be ſaid under this head, concerning the removal of certificate perſons, that as to this kind of removal there is ſcarce one good order (which is a little ſurpriſing in a matter of daily practice), yea ſcarce one which is capable of being amended even by the ſtatute of the 5 *G.* 2. for there are objections which go to the very eſſence and ſubſtance of the order, eſpecially the want of proper adjudications, either that the party is become chargeable, or of the place of his laſt legal ſettlement (for he may have gained one after the certificate), or both: for a judgment without adjudging, is a contradiction; and where there is no judgment, there is in ſtrictneſs nothing to appeal againſt, but only an order that the pariſh ſhall receive and provide for a perſon, who for ought appears doth not belong to them.

By the 8 & 9 W. c. 30. *If any perſon who ſhall come into any pariſh or place, there to reſide, ſhall deliver a certificate to one of the churchwardens or overſeers there, ſuch certificate ſhall oblige the pariſh or place granting the ſame, to receive and provide for the perſon mentioned in the ſaid certificate, together with his family, as inhabitants of that pariſh, whenever they ſhall happen to become chargeable to, or be forced to aſk relief of the pariſh, townſhip, or place, to which ſuch certificate was given; and then, and not before, it ſhall be lawful for any ſuch perſon, and his children, tho' born in that pariſh, not having otherwiſe acquired a legal ſettlement there, to be removed, conveyed, and ſettled in the pariſh or place from whence ſuch certificate was brought.* ſ. 1.

And by the 3 G. 2. c. 29. *When any overſeer or other perſon ſhall remove back any perſons or their families, reſiding under a certificate, and becoming chargeable, to the pariſh or place to which they ſhall belong; ſuch overſeer or other perſon ſhall be reimburſed ſuch reaſonable charges as they may have been put unto in maintaining and removing ſuch perſons, by the churchwardens or overſeers of the place to which ſuch perſons are removed; the ſaid charges being firſt aſcertained and allowed of by one or more juſtices for the county or place to which ſuch removal ſhall be made; which ſaid charges, ſo aſcertained and allowed, ſhall, in caſe of refuſal of payment, be levied by diſtreſs and ſale of the goods of the churchwardens and overſeers of the place to which ſuch certificate perſon is removed, by warrant of ſuch juſtice or juſtices.* ſ. 9.

Form

Form of an order of removal of a certificate perſon.

Weſtmorland { To the churchwardens and overſeers of the poor of the pariſh of *Orton* in the ſaid county of *Weſtmorland*, and to the churchwardens and overſeers of the poor of the pariſh of *Penrith* in the county of *Cumberland*.

WHEREAS *complaint hath been made by the churchwardens and overſeers of the poor of the pariſh of* Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife*, Thomas *their ſon aged* 8 *years, and* Agnes *their daughter aged* 4 *years, having for ſome time laſt paſt dwelt in the pariſh of* Orton *aforeſaid, being allowed ſo to do by reaſon of a certificate bearing date the* ——— *day of* ——— *in the year of our lord* ——— *under the hands and ſeals of* A. C. *and* B. C. *churchwardens, and* A. O. *and* B. O. *overſeers of the poor of the ſaid pariſh of* Penrith, *atteſted by* A. W. *and* B. W. *two credible witneſſes, and allowed by* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county of* Cumberland, *according to the directions of the ſeveral acts of parliament in ſuch caſe made and provided, are become chargeable to the ſaid pariſh of* Orton; *And whereas it appears to us, as well upon the oath of the ſaid* John Thomſon *as otherwiſe, that neither they the ſaid* John Thomſon, Mary *his wife*, Thomas *and* Agnes *their children, nor any of them, have gained any legal ſettlement ſince the date of the ſaid certificate: Whereby, and upon due conſideration had of the premiſſes, it appears to us, and we do hereby adjudge, that the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, are become chargeable to the ſaid pariſh of* Orton, *and that the place of the laſt legal ſettlement of them and every of them is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *Theſe are therefore to require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome or one of you, to convey the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Penrith, *to receive and provide for them as inhabitants of your pariſh. Given under our hands and ſeals the* ——— *day of* ——— *in the year of our lord* ———.

Allowed by J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace*] *H.* 9 *An. K.* and *Newton.* Order for removing a certificate perſon, not ſetting forth that it was allowed by two juſtices, but adjudging the pariſh which granted the certificate to be the place of the laſt legal ſettlement. By Mr. J. *Probyn*; The

order is good, for it ſets out that the *pauper* came by certificate, and adjudges that he was actually chargeable, and that *Newton* was the place of his laſt legal ſettlement, he having gained no ſettlement elſewhere ſince; which ſets out the whole reaſon of their judgment, and would make the ſettlement good, if there had been no certificate. *Seſſ. C. V.* 1. 149.

M. 7 *G. Barleycroft* and *Cole-overton.* Order of removal of a certificate perſon; It was not ſaid that the certificate was *atteſted*, but only that it was *allowed.* But by the court, The atteſtation is by the ſtatute made previous to the allowance, and therefore when they ſay it was allowed according to the act of parliament, we muſt intend it was atteſted, for otherwiſe it could not be ſo allowed. And the order was confirmed. *Str.* 402.

Are become chargeable] *E.* 9 *An. Q.* and *Brumſtead.* An order of two juſtices for the removal of a man that came into a pariſh by certificate, was quaſhed upon this exception; It was ſaid in the order, that they removed him, becauſe he was *likely to become chargeable:* And the whole court were of opinion, that the juſtices cannot remove a perſon that comes into a pariſh by certificate, till he is actually chargeable to the pariſh. 2 *Salk.* 530.

H. 4 *G. Teelby* and *Willerton.* The juſtices remove a certificate woman, being *likely* to become chargeable. But by the court; She is by the ſtatute not removable, till ſhe actually becomes chargeable. And the order was quaſhed. *Str.* 77.

And we do hereby adjudge] *T.* 2 *An. Maldon* and *Fleetwick.* An order was made, reciting, that whereas complaint hath been made unto us, that ſuch a perſon, who is lately come into the pariſh with a certificate, is actually chargeable to the pariſh; theſe are therefore to require you to remove: And quaſhed, for that there was no adjudication. 2 *Salk.* 530.

T. 15 *G.* 2. *K.* and *Great Bedwin.* Order of removal of a certificate perſon, in which there was no complaint of the churchwardens or overſeers, nor any adjudication that the certificate perſon is actually become chargeable. On appeal, the ſeſſions in purſuance of the 5 *G.* 2. amend the order in theſe particulars, as matter of form only, and inſert in the ſaid order ſuch complaint and adjudication. And now the queſtion was, whether theſe amendments went only to matter of form, or to the ſubſtance and merits of the order. By *Lee* Ch. J. There has been but one caſe in this court on this act ſince the making of it, and that was not determined: The preſent ſeems to be a very ſtrong caſe againſt the power of amending. For there muſt be a *complaint* from the overſeers, otherwiſe the juſtices have no power to remove; and a certificate perſon muſt be *adjudged* to be actually chargeable, otherwiſe he cannot be removed: And theſe amendments might be the real merits on which this caſe depended. And it would be a detrimental conſtruction of the act, to take it ſo largely; and would be giving the ſeſſions an original juriſdiction. And quaſhed by the whole court. *Seſſ. C. V.* 2. 142. *Str.* 1158.

But after all, it doth not appear, how it becomes neceſſary in the order of removal, to take any notice of the certificate at all, or to make any further uſe of it than as evidence to the juſtices of the ſettlement: And if it is not neceſſary to recite it, it is better to omit the ſame; becauſe a miſrecital, either in the date, or in the names of the perſons, or in any other material part, will be fatal, for that then there will be no ſuch certificate as is there recited, and the order muſt fall of courſe. And I do not ſee, why the form may not be much more plain and ſimple, by drawing the ſame very little varied from the common form of an order of removal of other perſons having no certificate. It is true, where the perſons are only *likely to be chargeable*, it is then requiſite to ſet forth in the order that they have no certificate; for if they have one, they cannot be removed till they actually be chargeable. But if the order do ſet forth that they are chargeable, in that caſe it is not at all material whether they have a certificate or not; for in both caſes alike, they are then equally removeable. And if ſo, then the form may be this, both for a certificate perſon, and for a perſon having no certificate, who is actually become chargeable:

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* Orton *in the ſaid county of* Weſtmorland, *and to the churchwardens and overſeers of the poor of the pariſh of* Penrith *in the county of* Cumberland, *and to each and every of them.*

Upon the complaint of the churchwardens and overſeers of the poor of the pariſh of Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife*, Thomas *their ſon aged* 8 *years, and* Agnes *their daughter aged four years, have come to inhabit in the ſaid pariſh of* Orton, *not having gained a legal ſettlement there, and that the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children are now chargeable to the ſaid pariſh of* Orton; *We the ſaid juſtices, upon due proof made thereof, as well upon the examination of the ſaid* John Thomſon *upon oath, as otherwiſe, and likewiſe upon due conſideration had of the premiſſes, do adjudge the ſame to be true; and we do likewiſe adjudge, that the lawful ſettlement of them the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *We do therefore require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome, or one of you, to convey the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and over-*

seers of the poor of the said parish of Penrith, *to receive and provide for them as inhabitants of your parish. Given under our hands and seals the* ——— *day of* ——— *in the* ——— *year of the reign of his said maj sty king* George *the second.*

iii. Appeal against the order of removal.

Power of appealing.

1. *All persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county, at their next quarter sessions, who shall do them justice according to the merits of their cause.* 13 & 14 C. 2. c. 12. s. 2.

And by the 8 & 9 *W.* c. 30. *The appeal against any order of removal of any poor person, shall be had, prosecuted, and determined, at the general or quarter sessions of the peace for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed, doth lie, and not elsewhere.* s. 6.

All persons who think themselves aggrieved] *E.* 4 *W. K.* and *Hartfield.* Two justices removed *Nicholas Wells*, from the parish of *Hartfield*, to the parish of *Frampfield*; from which order, *Wells* the party himself, and not the parish, appealed: It was objected, that the party himself cannot appeal, because the appeal is given only to the parish aggrieved: But by the whole court, the party may appeal as well as the parish. *Carth.* 222.

T. 4 *G. K.* and *Almonbury.* An order of two justices is quashed at the sessions upon appeal, without saying, *at the appeal of the party grieved.* And the court inclined to quash the order for this fault, till they were informed the precedents were most of them so, and for that reason and that only, as *Pratt* Ch. J. declared, the order was confirmed. *Str.* 96.

At the next general or quarter sessions] *E.* 2 *G.* 2. *K.* and *Norton.* Exception was taken to an order of sessions, for discharging an order of removal, because the justices order was dated *June* 21. and the sessions order was not till *Michaelmas* sessions following, so that *Midsummer* sessions intervened. To this it was answered, that by the express words of the statute the appeal is to be the next sessions after the parties find themselves aggrieved, which is not till the removal; and for ought appears *Michaelmas* sessions might be the next sessions after the grievance. And so it was held in the case of *Milbrook* and *St. John's* in *Southampton*, *M.* 1 *G.* To which the court agreed, and the sessions order was affirmed. *Str.* 831.

T. 11 *W. K.* and *Langley.* It was moved to quash an order of sessions, because the justices had adjourned the appeal from one sessions to another, and so the determination upon the appeal was not at the next quarter sessions. But by the court; The appeal must be lodged at the next quarter sessions, but when it is lodged, the justices may adjourn it. 2 *Salk.* 605. *Comb.* 365.

H. 20 *G.* 2. *K.* and *Polstead.* Appeal was made to the quarter sessions in *Suffolk* held *April* 7. 1746. against an order of removal. The sessions was adjourned to *April* 9. at *Woodbridge*, where

where for want of a sufficient number of justices nothing could be done. *April* 11. a sessions is held at *Ipswich*, and adjourned to the 14th at *Bury*, where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at *Woodbridge*. And of that opinion was the court; for the words in the 2 *H.* 5. *c.* 4. *and more often if need be*, were never considered as giving more than one original sessions in a quarter, but only impowering adjournments. The country must take notice of adjournments, but are not supposed to expect a new sessions till the usual time. And the order of sessions was quashed. *Str.* 1263.

T. 15 *G.* 2. *Roode* and *North Bradley*. A person was removed from *Roode* to *North Bradley*. *North Bradley* gave notice of appeal; on which, *Roode* took him back, but however got their order confirmed at sessions. The next sessions set both aside as fraudulent. And now *Roode* insisted, that the order was good, as not being appealed from at the next quarter sessions: And as to the other, that it was not in the power of one sessions to set aside the act of the other. All being now before the court, they quashed the first order, as being properly quashable on appeal; and would not take notice, that it was not at the next sessions after service of the order, which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next sessions. And as to the order of confirmation, they quashed that, as not being made on any appeal, and consequently without jurisdiction, and at the same time quashed the latter part of the second sessions order, which rescinded that confirmation, as not being properly before them. *Str.* 1168.

For the county, division, or riding, from whence the removal was] *E.* 13 *W. Watford* and *Wendover*. Two justices of *St. Albans* remove a poor person to *Wendover*. *Wendover* appeals to the sessions at *St. Albans*, where the order was confirmed. By the court; The appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was *coram non judice*. 2 *Salk.* 490.

And in the case of *Malden*, *M.* 11 *An.* By Lord *Parker*, where there is a town corporate that hath sessions of its own, and the justices within that town make an order there, if the parties will appeal, they must appeal to the county sessions, and not to their own sessions, for then there would be an appeal *ab eodem ad eundem*, there being, it may be, the same justices sitting, who made the order. *Cas. of S.* 10.

And by the statute of the 17 *G.* 2. *c.* 38. In all corporations or franchises, who have not four justices, persons aggrieved may appeal (if they think fit) against any orders of the justices, to the next sessions of the county. *s.* 5.

2. *No appeal from any order of removal shall be proceeded upon, unless reasonable notice be given by the churchwardens or overseers of the parish or place appealing, unto the churchwardens or overseers of the parish or place, from which the removal shall be; the reasonableness of which notice shall be determined by the justices at the quarter* Notice of appeal.

ſeſſions to which the appeal is made; and if it ſhall appear to them, that reaſonable time of notice was not given, then they ſhall adjourn the appeal to the next quarter ſeſſions, and then and there finally determine the ſame. 9 G. c. 7. ſ. 8.

Reaſonable notice] It is not expreſſed in the act, that this notice ſhall be in writing; but the court will better judge of the reaſonableneſs of it, if it ſhall be in writing: And it may be thus;

TO the churchwardens and overſeers of the poor of the pariſh of ——— in the county of ———.

This is to give notice to you and every of you, that we the churchwardens and overſeers of the poor of the pariſh of ——— in the county of ——— do intend at the next quarter ſeſſions of the peace to be holden for the ſaid county of ——— to commence and proſecute an appeal againſt an order of J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county of ——— for and concerning the removal of ——— to our ſaid pariſh of ———. Witneſs our hands this ——— day of ———.*

A. B. } *Churchwardens.*
C. D. }
E. F. } *Overſeers of the*
G. H. } *poor.*

Order not appealed againſt, is final.

3. *H.* 12 *An. Malendine* and *Hunſdon.* Two juſtices by an order ſend ſome poor perſons to *Hunſdon.* Two juſtices there by an order ſend them back again. By the court; They ought to have appealed, and not ſent them back; and held the order of the firſt two juſtices to be good, becauſe there was no appeal againſt it. *Fol.* 273.

T. 12 *W. Chalbury* and *Chipping Faringdon.* A perſon was removed by order of two juſtices from a pariſh in *Warwickſhire*, to *Chalbury* in *Oxfordſhire*, from thence by order of two juſtices to *Chipping Faringdon* in *Berkſhire:* It was objected, That *Chalbury* ought to have appealed, and got the order upon them diſcharged. Which *Holt* Ch. J. agreed: For ſending the poor man to another place, is falſifying the firſt order, which cannot be done, but by appeal; for the order of two juſtices is a determination of the right againſt all perſons, till it be reverſed: *Chalbury* ſhould have appealed from the *Warwickſhire* order, and got that ſet aſide, and ſent the man back thither; and the juſtices there ſhould have ſent him to *Chipping Faringdon.* Therefore the latter order was naught. 2 *Salk.* 488.

E 5 *G.* 2. *K.* and *Northfeatherton.* Two juſtices made an order, by which they removed a man, his wife, and 4 children, naming them, to *Featherton:* and there was no appeal. Afterwards, *Featherton* finds out, that this woman was not the wife, for that the man, tho' married to her, was married before to another woman, and conſequently the ſecond marriage totally void. And they remove the woman by her maiden name to *Horſington*, and the four children thither alſo as baſtards. *Horſington* appeals; and

and the seſſions upon hearing the matter ſtate the caſe ſpecially, that this woman and the 4 children were the ſame with the woman and children removed by the firſt order, and gave judgment that the firſt order was concluſive, and thereupon quaſhed the ſaid ſecond order. And by the court; They have ſlipped their opportunity, and the firſt order not appealed againſt is concluſive. *Seſſ. C. V.* 1. 154.

M. 16 *G.* 2. *Nympsfield* and *Woodcheſter*. In 1731, a man and his wife were removed from *Nympsfield* to *Woodcheſter*, and there was no appeal. They had afterwards returned to *Nympsfield*, and had there three children, who were now ſent from *Nympsfield* to *Woodcheſter* together with the father. And upon appeal as to the children, it was offered to give in evidence, that the man had a former wife, and conſequently the children born at *Nympsfield* were as baſtards ſettled there. The ſeſſions refuſed to let *Woodcheſter* go into this evidence, being of opinion, that *Woodcheſter* was concluded by the firſt order unappealed from, and that it made no difference that the children were born afterwards. The court, on debate, confirmed both orders: for the marriage being eſtabliſhed by the firſt order, the ſettlement of the children (which is derivative) follows of courſe; and can no way be impeached, but by entring into the merits of the firſt order, which has been acquieſced in. And nothing is more eſtabliſhed, than that an order unappealed from is concluſive. *Str.* 1172.

4. By the aforeſaid ſtatute of the 13 & 14 *C.* 2. it is expreſſed, that the juſtices upon the appeal, ſhall do to the parties juſtice *according to the merits of their cauſe.* Seſſions to proceed upon the merits.

And by the 5 *G.* 2. *c.* 19. *On all appeals to the ſeſſions againſt the judgments or orders of any juſtices of the peace, the juſtices there ſhall cauſe defects of form to be rectified and amended, without any coſt to the party, and after ſuch amendment ſhall proceed to hear the truth and merits of the cauſe.* ſ. 2.

5. *T.* 8 & 9 *G.* 2. *K.* and *the Juſtices of Weſtmorland.* Order of two juſtices of the borough, for removing a poor family. Appeal to the ſeſſions of the county, at which only four juſtices were preſent, who were equally divided; ſo no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the juſtices of the county in general, to proceed on the appeal. It was returned, that at ſuch a ſeſſions an appeal was lodged, and that four juſtices only attended, two whereof were intereſted in the queſtion, the other two were divided in opinion. It was agreed on all hands that this return was very odd, and not to be ſupported. Sir *Thomas Abney* objected, that the writ of *mandamus* was bad, and ought to be quaſhed, for that it doth not appear, that the appeal was before them; and that, for ought appears, the *mandamus* requires the juſtices to do an impoſſible thing, *viz.* to proceed on an appeal not before them, ſince the appeal being lodged at a former ſeſſions, was not continued over to the ſubſequent ſeſſions, and therefore was by law gone. Mr. *Robinſon* on the other ſide ſaid, that it was not uſual in ſuch caſes to return the continuances; but that if in fact there was no ſuch continuance, the fault was in the juſtices, who ought to have adjourned Court equally divided on the appeal.

journed the appeal, till by the coming of more juſtices, the matter might have been determined. By *Hardwick* Ch. J. the queſtion is, whether there is a poſſibility of the juſtices proceeding in this appeal: He thought, if there was not, as there would be a failure of juſtice in this reſpect, an information ought to go againſt the juſtices who were at the ſeſſions. He ordered the caſe to ſtand over, and recommended it to Sir *Thomas Abney* to adviſe his clients to proceed on the appeal, or return the continuances; and ſeemed at length inclined, if they did not comply, to grant a peremptory *mandamus*. *Seſſ. C. V.* 2. 193.

The juſtices may alter their order during the ſame ſeſſions.

6. *M.* 3 *An. St. Andrew's* and *St. Clement's Danes*. The ſeſſions made an order, on an appeal from an order of removal, and afterwards the ſame ſeſſions vacated it by a ſubſequent order; and a *certiorari* being brought, both orders of ſeſſions were returned thereon. By *Holt* Ch. J. The ſeſſions is all as one day, and the juſtices may alter their judgment at any time, whilſt it continues; but they ſhould not have returned the vacated order, but only the latter; for the effect of the court's ſetting aſide the firſt order is, that it ceaſeth to be an order, and conſequently ought not to be returned as an order vacated by another order, but it ſhould have been annulled and made nothing. 2 *Salk.* 494, 606.

Coſts on the appeal.

7. *And for the more effectual preventing of vexatious removals and frivolous appeals, the juſtices in ſeſſions upon any appeal concerning the ſettlement of any poor perſon, or upon any proof before them there to be made, of notice of any ſuch appeal to have been given by the proper officer to the churchwardens or overſeers of any pariſh or place (tho' they did not afterwards proſecute ſuch appeal), ſhall at the ſame ſeſſions order to the party in whoſe behalf ſuch appeal ſhall be determined, or to whom ſuch notice did appear to have been given, ſuch coſts and charges in the law, as by the ſaid juſtices in their diſcretion ſhall be thought moſt reaſonable and juſt; to be paid by the churchwardens, overſeers, or any other perſon, againſt whom ſuch appeal ſhall be determined, or by the perſon that did give ſuch notice; and if the perſon ordered to pay ſuch coſts, ſhall live out of the juriſdiction of the ſaid court, any juſtice where ſuch perſon ſhall inhabit, ſhall on requeſt to him made, and a true copy of the order for the payment of ſuch coſts produced, and proved by ſome credible witneſs on oath, by his warrant cauſe the ſame to be levied by diſtreſs; and if no ſuch diſtreſs can be had, ſhall commit ſuch perſon to the common gaol, there to remain by the ſpace of* 20 *days*. 8 & 9 W. c. 30. ſ. 3.

M. 5 *G.* 2. *K.* and *the county of Nottingham*. A *mandamus* was granted for the juſtices to give coſts to the party in whoſe favour the appeal had been determined; yet upon their return of it, the court held it reaſonable for them to have the power of judging whether coſts ſhall be allowed or not, and thereupon quaſhed the writ of *mandamus*. *Nelſ. Poor.*

Maintenance to be reimburſed.

8. *For the preventing of vexatious removals, if the juſtices ſhall at their quarter ſeſſions, upon an appeal before them there had, concerning the ſettlement of any poor perſon, determine in favour of the appellant, that ſuch poor perſon was unduly removed, they ſhall at the ſame quarter ſeſſions, order and award to ſuch appellant, ſo much*

money,

money, as shall appear to the said justices to have been reasonably paid by the parish or other place on whose behalf such appeal was made, towards the relief of such poor person, between the time of such undue removal, and the determination of such appeal; the said money so awarded, to be recovered in the same manner as costs and charges upon an appeal are to be recovered by the statute of the 8 & 9 W. 9 G. c. 7. s. 9.

E. 3 *G.* 2. *St. Mary's Nottingham* and *Kirklington.* Motion for a *mandamus* to the justices of the town and county of *Nottingham*, commanding them to allow the parish of *Kirklington*, the expence and charges their officers had been put to, in keeping a poor person from the time of his removal, till the order was discharged by the sessions upon appeal. And a *mandamus* was granted. *Sess. C. V.* 2. 67.

9. *M.* 13 *W. Mynton* and *Stony Stratford.* By *Holt* Ch. J. and the court; If on appeal to the sessions an order be discharged, that judgment binds only between the parties: But when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties; for it is an adjudication that this is the place of the party's last legal settlement. 2 *Salk.* 527. Order confirmed upon the appeal, is final.

M. 10 *W. Harrow* and *Risslip.* A person comes into *Harrow*, and being likely to become chargeable, was removed to *Risslip*. *Risslip* appealed; and upon the appeal he was adjudged to be settled at *Kislip*. Afterwards *Risslip* discovered, that *Hendon* was the place of his last legal settlement, and sent him thither; and the question was, Whether after the adjudication upon the appeal, *Risslip* was not estopped against all the world, to say, that *Risslip* was not the place of his last legal settlement. By *Holt* Ch. J. *Risslip* is estopped to say otherwise; for if *Risslip* had not been the very place of his last legal settlement, the justices must have sent him back to *Harrow*, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to *Risslip*. And now this is in effect the same question again, namely, whether he belongs to *Risslip?* Which question has been already determined by the justices on the appeal, who have adjudged that he was last settled at *Risslip*. Now this point being determined, the appeal must be final and conclusive, otherwise there would be no end of things. 2 *Salk.* 524. 3 *Salk.* 261.

M. 6 *G. Little Bitham* and *Somerby.* A person is sent by order of two justices to *Somerby*, as the place of his last legal settlement. *Somerby* appeals, and the order is confirmed. Soon after, without stating that he had gained any new settlement, *Somerby* sends him to a third place. By the court, An order of reversal is final only between the two parishes; but if it be confirmed, it is final as to all the world: and therefore no new settlement appearing, the order of removal from *Somerly* must be quashed. *Str.* 232.

10. *H.* 10 *W. St. Michael's Bedingham* and *Kingston Bowsey.* Order reversed on the appeal is conclusive only as to the parish acquitted; but the first parish may remove again to any parish not party to the former removal. 2 *Salk.* 486. Order quashed on the merits, conclusive only between the parties.

T 9 G.

T. 9 *G. Foſton* and *Carlton.* Two juſtices ſend a poor perſon from *Foſton* to *Carlton.* On appeal the order is quaſhed; and at three months end, two juſtices, without ſhewing any new ſettlement ſince the laſt order, make a new order to remove him from *Foſton* to *Carlton* a ſecond time. But by the court, The laſt order muſt be quaſhed: The caſe of *Barrow* and *Ingoldſby*, *E.* 11 *An.* was at the diſtance of nine months, but the court quaſhed it, becauſe there could be no inconvenience in putting them to ſhew a new ſettlement. *Str.* 567.

E. 19 *G.* 2. *Oſgathorpe* and *Diſerth.* A perſon was removed by order of two juſtices from *Diſerth* to *Oſgathorpe*; which order on appeal was diſcharged. He was by a ſecond order ſent from *Diſerth* to *Oſgathorpe* as a certificate man; and upon an appeal it was ſtated, that the firſt removal was *before* he became chargeable, and the ſecond *after* he became ſo: and the ſeſſions were of opinion, that the firſt determination was not final between the pariſhes, and therefore confirmed the ſecond order of removal. It was moved to quaſh theſe two laſt orders, on the authority of thoſe caſes wherein it hath been determined, that a reverſal is final between the parties. But by the court, So it would be, if the ſpecial matter did not appear: a certificated perſon cannot be ſent back, until he is actually a charge; a removal before is premature: The conſequence of which only is, that he muſt be ſuffered to remain till he doth become chargeable; but not to make a premature removal final for ever. The laſt orders muſt be confirmed. *Str.* 1256.

Order quaſhed for form, not concluſive between the parties.

11. An order of two juſtices, if quaſhed at the ſeſſions upon an appeal, for want of form only, is not concluſive between the two pariſhes. *Foly* 276.

Superintendency of the court of king's bench.

12. It was moved for ſetting aſide an order of ſeſſions confirming an order of two juſtices upon appeal. But the court would hear nothing of the merits of the cauſe, the order of ſeſſions being in that caſe final, unleſs there had been error in form. 1 *Ventr.* 310.

M. 9 *An. South Cadbury* and *Braddon.* On appeal to the ſeſſions, the court diſcharged the firſt order. It was moved to ſet aſide the order of diſcharge, becauſe the juſtices do not ſay, whether they diſcharge it for form, or on the merits; for if it was for form, the pariſh is not bound, but if on the merits, the pariſh in conſequence is hereby diſcharged for ever. But by the court; The juſtices are not bound to expreſs the reaſon of their judgment, any more than other courts; but the reaſon of their judgment muſt be collected from the record. Particularly,

If the ſeſſions reverſe the firſt order, and that being removed appears to be good, this court will intend it was reverſed on the merits, and affirm the order of ſeſſions.

If the ſeſſions reverſe the firſt order, and that being removed appears not to be good, we muſt intend it was reverſed for form, and affirm the order of reverſal.

But if the ſeſſions affirm the firſt order, and that appears to be good, we muſt affirm the order of ſeſſions.

But if the firſt order appears bad, and the ſeſſions affirm it, this court will reverſe it, becauſe it appears naught. 2 *Salk.* 607.

So that the caſe is this: If the ſeſſions by their order do barely affirm or quaſh the order of the two juſtices, and both the ſaid orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the firſt order of the two juſtices. And if that order appears *good as to form*, and is *confirmed* by the ſeſſions, the court will intend it was confirmed upon the merits; If it is *good as to form*, and *quaſhed* by the ſeſſions, the court will intend it was quaſhed upon the merits; If it is *bad as to form*, and is *confirmed* by the ſeſſions, the court will quaſh the confirmation, becauſe it appears to be erroneous; If it is *bad as to form*, and is *quaſhed* by the ſeſſions, the court will intend it was quaſhed for form.

But if the ſeſſions, by their order, do not barely affirm or quaſh the order of the two juſtices, but do ſet forth the reaſons of their ſaid order, and ſtate the caſe ſpecially thereupon; then the court will judge upon the caſe ſo ſtated by the ſeſſions; that is to ſay, they will judge of the law as it ariſes upon thoſe facts ſtated, but not of the facts themſelves, for thoſe they will ſuppoſe to have appeared ſufficiently to the juſtices upon the evidence. And this is the method, when the juſtices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of ſeſſions which confirms or quaſhes the order of the two juſtices, to ſtate the caſe ſpecially; and then the party which is not ſatisfied, by procuring the ſame to be removed into the king's bench by *certiorari*, may have it determined there by the judgment of that court, who will quaſh or confirm the order of ſeſſions as they ſee cauſe.

IV. Of the poor rate, and other helps towards their relief.

i. Of the poor rate.

ii. Taxing others in aid.

iii. How far parents and children are liable to maintain each other.

i. Of the poor rate.

1. *The churchwardens and overſeers of every pariſh, or the greater part of them, ſhall raiſe weekly or otherwiſe (by taxation of every inhabitant, parſon, vicar, and other, and of every occupier of lands, houſes, tithes impropriate, propriations of tithes, coal mines, or ſaleable underwoods in the ſaid pariſh) a convenient ſtock of flax, hemp, wool, thread, iron, and other ware and ſtuff, to ſet the poor on work; and alſo competent ſums for the neceſſary relief of the lame, impotent, old, blind, and ſuch other among them being poor as* Making a rate.

as are not able to work, and alſo for the putting out poor children apprentices. 43 El. c. 2. ſ. 1.

The churchwardens and overſeers] *H.* 2 *An. Tawney*'s caſe. The concurrence of the inhabitants in making a rate, is not at all neceſſary; for by theſe words the churchwardens and overſeers may make one without them. L. *Raym.* 1013. 2 *Salk.* 531.

Shall raiſe weekly or otherwiſe by taxation] *T.* 19 *G.* 2. *K.* and the churchwardens of *Weobly*. The court refuſed to grant a *mandamus*, directing to inſert particular perſons in the poor rate, upon affidavits of their ſufficiency, and being left out to prevent their having votes for parliament men; for that the remedy was by appeal, and this court never went further, than to oblige the making a rate, without medling with the queſtion, who is to be put in or left out; of which the pariſh officers are the proper judges, ſubject to an appeal. *Str.* 1259.

By taxation] By this ſtatute the taxation ought to be equal; and therefore ought to be continually altered as circumſtaces alter. 2 *Salk.* 526.

M. 12 *W. K.* and *Audly*. A rate was agreed on in 1665, by the inhabitants of *Audly*, which had been followed ever ſince till the laſt year, when a new rate was made. On appeal to the ſeſſions, the new rate was quaſhed, and the old one ordered to ſtand. By *Holt* Ch. J. The old rate, however juſt at firſt, may be unequal now, and therefore the juſtices cannot make a ſtanding rate, for lands may be improved. 2 *Salk.* 526.

H. 2 *G. K.* and *Clerkenwell*. An order was quaſhed, which was made to confirm a poor rate, which rate was made according to the land tax: Objected, that this taxation was not equal, becauſe the perſonal eſtate in the publick funds is not chargeable to the land tax, but it is to the poor: And by the whole court this rate for that reaſon was ſet aſide. *Fol.* 12.

Of every inhabitant] Where perſons ſhall come into, or occupy any premiſſes, out of which any other perſon aſſeſſed ſhall be removed, or which at the time of making ſuch rate was unoccupied, then every perſon ſo removing from, or coming into, or occupying the ſame, ſhall be liable to pay ſuch rate, in proportion to the time that ſuch perſon occupied the ſame reſpectively, under the like penalty of diſtreſs, as if ſuch perſon ſo removing had not removed, or the perſon coming in or occupying had been originally aſſeſſed in ſuch rate; which proportion, in caſe of diſpute, ſhall be aſcertained by two juſtices. 17 *G.* 2. *c.* 38. *ſ.* 12.

Of every inhabitant, parſon, vicar, and other] Under theſe words ſeems to be included the taxation of perſonal eſtates; and real eſtates are charged by the words next after.

And when goods or perſonal eſtate are rated, it ought to be done in the ſame proportion as lands are taxed, namely, every 100*l.* at the rate of 5*l.* a year. *Read. Poor.*

Every inhabitant — and every occupier of lands, &c.] A perſon who hath lands in his occupation, and a ſtock of goods and wares beſides,

beſides, as a draper, grocer, and the like, may be taxed for both, but not for ſuch ſtock or goods with which he uſes to manure his lands. *Read. Poor.* L. *Raym.* 1280.

Occupier] The farmer or occupier ſhall pay this tax, and not the landlord, who is never to be taxed for his rent; for then the landlord would pay twice: but if he be poſſeſſed of a ſum of money, or other perſonal eſtate, he may be taxed for that. L. *Raym.* 1280. *Dalt.* 165.

Of lands] *E.* 1 *An.* By *Holt* Ch. J. Hoſpital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hoſpital, can diſcharge or exempt them from taxes to which they were ſubject before, and throw a greater burden upon his neighbours. 2 *Salk.* 527.

Tithes] *H.* 4 *G. K.* and *Turner.* The defendant being aſſeſſed towards the poor rate for his tithes as vicar, appealed to the ſeſſions, where he is abſolutely diſcharged. But by the court, As vicar he is chargeable by the 43 *El.* and the ſeſſions hath only power to moderate, but not diſcharge. And the order of ſeſſions was quaſhed. *Str.* 77.

T. 8 *G. K.* and the inhabitants of *Lambeth.* The parſon lets his tithes to farm; and the farmer agrees with the tenant of the land, that in conſideration of his paying ſo much, he ſhall retain the tithe, and gather in the whole crop without dividing: and which of the two is chargeable to the poor rate, as occupier of the tithes, was the queſtion. And the ſeſſions diſcharge the leſſee of the parſon, and tax the tenant of the land. But by the court, The order muſt be quaſhed. The farmer of the tithes is *prima facie* liable to the poor rate, and therefore unleſs he can throw that charge over upon another, the tax muſt be made upon him. The tenant of the land in this caſe can never be ſaid to be the occupier of the tithes; for he is either a perſon who buys the tithes, or elſe he is to be taken as only excuſed from paying any; and no body can ſay, but that though the parſon thinks fit to excuſe a pariſhioner, he will ſtill remain in point of law the occupier of the tithes. This agreement being only by parol, cannot enure as an under-leaſe of a thing that lies only in grant. Suppoſe it was the caſe of underwoods, which are ſold ſtanding, and the vendee grubs them up; can it be imagined, that makes him the occupier; or ſuppoſe the tenant ſells the whole crop ſtanding, will that make him leſs the occupier of the land? If it ſhould, it would be impoſſible for the officers of the pariſh to know whom to charge. We muſt take this tenant of the land to be like any other buyer of the tithes, ſince he has no more title to them than any ſtranger whatſoever; and when the parſon or his farmer receives a ſum of money in lieu of tithe, that is in law a receipt of the tithe; with this only difference, that it is not tithe in kind. In the caſe of a compoſition (as this is) or a *modus*, it was never thought but that the parſon was chargeable as occupier of the tithe: therefore there being no colour to charge the tenant of the land, the order of ſeſſions muſt be quaſhed. *Str.* 525.

Coal mines, or ſaleable underwoods] That is, proportioning them to an annual benefit. *Dalt.* 165.

In the ſaid pariſh] A man having lands in other pariſhes than where he lives, the ſame being in leaſe, or not in leaſe, he is to be taxed in the pariſh where he lives, according to his viſible eſtate there, and not for his lands or rent in another pariſh. *Dalt.* 165.

And by the 17 *G.* 2. *c.* 37. Where there ſhall be any diſpute in what pariſh or place, improved waſtes, and drained and improved marſh lands lie, and ought to be rated; the occupiers of ſuch lands, or houſes built thereon, tithes ariſing therefrom, mines therein, and ſaleable underwoods, ſhall be rated to the relief of the poor, and to all other pariſh rates, within ſuch pariſh and place which lies neareſt to ſuch lands; and if on application to the officers of ſuch pariſh or place, any diſpute ſhall ariſe, the juſtices at the next ſeſſions after ſuch application made, and after notice given to the officers of the ſeveral pariſhes and places adjoining to ſuch lands, and to all others intereſted therein, may hear and determine the ſame on the appeal of any perſon intereſted, and may cauſe the ſame to be equally aſſeſſed, whoſe determination therein ſhall be final. But this ſhall not determine the boundaries of any pariſh or place, other than for the purpoſe of rating ſuch lands to the relief of the poor, and other parochial rates. *ſ.* 1, 2.

Allowance of the rate by the juſtices.

2. By the aforeſaid ſtatute of the 43 *El.* the ſaid rate and taxation ſhall be made, *with the conſent of two juſtices, one whereof is of the* quorum, *dwelling in or near the pariſh or diviſion.* ſ. 1.

And this conſent is uſually given, by the juſtices ſigning the ſame, with their allowance thereupon.

But this conſent is to be underſtood of two juſtices out of ſeſſions; for the ſeſſions have no original power to order an aſſeſſment to be made, but only if it come before them by way of appeal: for in ſuch caſe the party would be deprived of the benefit of appealing. L. *Raym.* 798

M. 7 *G. K.* and the juſtices of *Dorcheſter*. A *mandamus* iſſued to the juſtices to ſign a poor rate made by the churchwardens and and overſeers. Before the return a motion was made to ſuperſede it, for ſeveral objections to the fairneſs of the rate; and that this would be ſpeedier and better for the poor, than to reſerve the debate of them for a formal return. But by the court, The two juſtices are neceſſary to ſign the rate only by way of form; for it is the churchwardens and overſeers that have the power of making it; and whether it be a fair rate or not, is proper for the juriſdiction of the ſeſſions, and was never intended for our examination. The *ſuperſedeas* being denied. the juſtices returned, that they could not allow the rate, it not being a juſt and proper rate: and the court having before given their opinion of this upon the motion, they reſented this uſage ſo far, that they quaſhed the return, and ordered an attachment againſt the juſtices, who thereupon ſubmitted, and returned that they had allowed the rate. *Str.* 393.

3. *The*

5. *The churchwardens and overſeers ſhall cauſe publick notice to be given in the church, of every rate for relief of the poor, allowed by the juſtices, the next* Sunday *after ſuch allowance; and no rate ſhall be reputed ſufficient to be collected, till after ſuch notice given.* 17 G. 2. c. 3. ſ. 1. Rate to be publiſhed.

4. *And they ſhall permit any inhabitant to inſpect ſuch rate at all ſeaſonable times, paying* 1 s. *and ſhall give copies on demand, being paid* 6 d. *for every* 24 *names.* 17 G. 2. c. 3. ſ. 2. Any perſon may inſpect the ſame.

And if any churchwarden or overſeer ſhall not permit any inhabitant to inſpect, or refuſe to give copies as aforeſaid, he ſhall forfeit 20 l. *to the party grieved.* ſ. 3.

5. *If any perſon ſhall be aggrieved by any aſſeſſment, or ſhall have any material objection to any perſon's being put in, or left out of ſuch aſſeſſment, or to the ſum charged on any perſon or perſons therein; he may, giving reaſonable notice to the churchwardens or overſeers, appeal to the next ſeſſions; but if reaſonable notice be not given, then they ſhall adjourn the appeal to the next ſeſſions after.* 17 G. 2. c. 38. ſ. 4. Appeal againſt the rate.

And *on all appeals from rates, the juſtices ſhall amend the ſame, in ſuch manner only as ſhall be neceſſary for giving relief, without altering ſuch rates, with reſpect to other perſons mentioned in the ſame; but if upon an appeal from the whole rate, it ſhall be found neceſſary to ſet aſide the ſame, then they ſhall order a new rate to be made.* id. ſ. 6.

And the court may award coſts to either party, as in caſes of ſettlements by the 8 & 9 *W.* *id. ſ.* 4.

6. *True copies of the rates ſhall be entred in a book, by the churchwardens and overſeers, within* 14 *days after all appeals from ſuch rates are determined; and they ſhall atteſt the ſame, by putting their names thereto; and all ſuch books ſhall be kept by the churchwardens and overſeers for the time being, whereto all perſons liable to be aſſeſſed may freely reſort, and ſhall be delivered over from time to time, to the new churchwardens and overſeers, as ſoon as they enter into their offices, to be preſerved and produced at the ſeſſions when any appeal is to be heard.* 17 G. 2. c. 38. ſ. 13. After appeal, rates to be entred in a book.

7. *It ſhall be lawful as well for the preſent as ſubſequent churchwardens and overſeers, or any of them, by warrant from any two ſuch juſtices, one whereof is of the* quorum, *to levy the ſaid ſums, and all arrearages, of every one that ſhall refuſe to contribute according as they ſhall be aſſeſſed, by diſtreſs and ſale.* 43 El. c. 2. ſ. 4. Rate to be levied by diſtreſs.

And by the 17 *G.* 2. *c.* 38. *The goods of any perſon aſſeſſed, and refuſing to pay, may be levied by warrant of diſtreſs, in any part of the county; and if ſufficient diſtreſs cannot be found within the county, on oath made thereof before a juſtice of any other county (which oath ſhall be certified in the warrant) the goods may be levied in ſuch other county or precinct, by virtue of ſuch warrant and certificate; and if any perſon ſhall be aggrieved by ſuch diſtreſs, he may appeal to the next ſeſſions for the county or precinct where the aſſeſſment was made.* ſ. 7.

But by *Holt* Ch. J. in the caſe of *Tracy* and *Talbot*, *T.* 3 *An.* The rate cannot be diſtrained for by virtue of a general warrant

made before the rate; but there ought to be a ſpecial warrant on purpoſe. 2 *Salk.* 532. That is to ſay, the non feaſance of the party ſhall not be left to the judgment of the officer, who may out of private reſentment ſell his neighbour's goods without ſufficient cauſe; but oath of the refuſal muſt be made before the juſtices. And it is reaſonable that the party ſhall be heard in his defence; for he may ſhew cauſe variouſly why a diſtreſs ſhould not be granted; as, that the rate was not regularly allowed, or was not publiſhed in the church, or that he had given notice of appeal, or that no demand or refuſal had been made, and the like.

The form of the ſummons in which caſe may be this:

Weſtmorland { To A. O. of the pariſh of ——— in the ſaid county, yeoman.

WE *whoſe names are hereunto ſet and ſeals affixed, two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* quorum, *do hereby ſummon you perſonally to appear before us at the houſe of* ——— *in* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the ſame day, to ſhew cauſe why you refuſe to pay the rate or aſſeſſment made for the relief of the poor of the ſaid pariſh for this preſent year; otherwiſe we ſhall proceed as if you had appeared. Given under our hands and ſeals the* ——— *day of* ——— *in the year of our lord* ———

And where any diſtreſs ſhall be made, for money juſtly due for relief of the poor, the diſtreſs it ſelf ſhall not be deemed unlawful, nor the parties making it be deemed treſpaſſers, for any defect or want of form in the warrant for the appointment of overſeers, or in the rate, or in the warrant of diſtreſs thereupon; nor ſhall the parties diſtraining be deemed treſpaſſers *ab initio*, on account of any irregularity, which ſhall be afterwards done by the parties diſtraining; but the party aggrieved by ſuch irregularity, may recover full ſatisfaction for the ſpecial damage, and no more, in an action of treſpaſs, or on the caſe. But where the plaintiff ſhall recover in ſuch action, he ſhall be paid his full coſts. But no plaintiff ſhall recover in any action, for any ſuch irregularity, if tender of amends hath been made by the party diſtraining, before ſuch action brought. 17 *G.* 2. *c.* 38. *ſ.* 8, 9, 10.

Commitment for want of diſtreſs.

8. *In defect of ſuch diſtreſs, it ſhall be lawful for two ſuch juſtices, to commit ſuch perſon to the common gaol, there to remain without bail or mainprize, until payment of the ſame.* 43 El. c. 2. ſ. 4.

Arrears to be levied by the ſucceeding overſeers.

9. *And if any perſon ſhall neglect to pay to ſuch overſeers, the ſucceeding overſeers ſhall levy the arrears, and ſhall reimburſe their predeceſſors the ſums which are allowed to be due to them in their accounts.* 17 G. 2. c. 38. ſ. 11.

Certiorari.

10. *E.* 5 *G.* 2. *K.* and *Uttoxeter.* Upon great debate, and ſearch of precedents, it was held, that a *certiorari* would not lie to remove the poor rate it ſelf, the remedy being to appeal, or by action when a diſtreſs is taken, which will anſwer all the ends of juſtice

juſtice in coming at an equal rate; whereas if the rate it ſelf ſhould be required to be ſent up, great inconveniences and delays would follow. *Str.* 932. *Caſes of S.* 317.

E. 7 *G.* 2. *K.* and juſtices of *Salop.* The true objection againſt a *certiorari* is, that if rates were removable, the poor might be ſtarved whilſt the rates were depending; and therefore the court, from the great inconvenience that would attend the removal of rates, have refuſed to do it. *Seſſ. C. V.* 1. 201. *Str.* 975.

ii. Taxing others in aid.

Hundred contributory.

1. *If the ſaid juſtices do perceive, that the inhabitants of any pariſh are not able to levy among themſelves ſufficient ſums for the purpoſes aforeſaid, then the ſaid two juſtices* (1 Q.) *ſhall tax, rate, and aſſeſs as aforeſaid any other of other pariſhes, or out of any pariſh within the hundred, to pay ſuch ſums to the churchwardens and overſeers of the ſaid poor pariſh, for the ſaid purpoſes, as the ſaid juſtices ſhall think fit.* 43 El. c. 2. ſ. 3.

That the inhabitants of any pariſh are not able] *H.* 8 *An.* Order of two juſtices: The caſe was thus; There were two vills in one pariſh, and the juſtices recite in their order, that one of the vills was very rich, and the other very poor; and further, that the vill which was rich, did not pay half ſo much to the poor, as the poor vill did. Objected, 1. One vill ought not to contribute to another, becauſe the ſtatute mentions pariſhes only. 2. The reaſon given for charging the rich vill to contribute to the poor vill is uncertain; *viz.* becauſe they do not pay half ſo much as the poor vill does, without ſhewing that either vill pays any thing to the poor. By the court; As to the firſt objection, ſurely this will come within the equity of the ſtatute, tho' the ſtatute only makes mention of *pariſhes*; and it is highly reaſonable, that one vill ſhould contribute to another in the ſame pariſh. But this order muſt be quaſhed on the ſecond objection, for the uncertainty. *Foley* 25.

Then the ſaid two juſtices] *T.* 2 *J.* 2. *K.* and *Grieſly.* The *ſeſſions* rated the adjacent pariſhes: Quaſhed; becauſe the ſtatute appoints it to be done by the two juſtices, and hereby they prevent an appeal. *Caſes of S.* 259.

The ſaid two juſtices ſhall tax, rate, and aſſeſs] *T.* 12 *G.* 2. *St. Mary*'s and *St. Peter and Paul*'s in *Marlborough.* Two juſtices order the churchwardens and overſeers of *St. Peter and Paul*'s to aſſeſs, raiſe, and levy a ſum towards the maintenance of the poor of *St. Mary*'s. But the order was quaſhed by the court; becauſe the juſtices had delegated their power to the churchwardens and overſeers, whereas by the ſtatute they themſelves are to make the rate on all, or on particular perſons. *Str.* 1114.

Any other of other pariſhes] *M.* 32 *C.* Reſolved, that the juſtices may impoſe the charge upon any of the inhabitants of the neighbouring pariſhes, and are not obliged to put a general tax upon the whole pariſh. *Comb.* 309. 1 *Ventr.* 350.

T. 12 *G. K.* and *Boroughfen.* There was a taxation of several persons in a parish: Objected, that it should be of all the persons in a particular place or parish. The court thought it unreasonable, that several persons in a parish should be charged, and not all, but that the words of the act are very strong; and did not quash the order for this objection. *Foley* 29.

Within the hundred] *T.* 9 *An. Boroughfen* and *St. John's.* Motion to quash an order of two justices; for that it doth not appear upon the order, that the parish which is charged to aid the parish that is not able to maintain its own poor, is within the same hundred. And quashed by the whole court. *Foley* 27.

H. 8 *An.* Motion to quash an order of two justices, which was made to assess the parishes of *St. Stephen* and *St. Mary Magdalen* in *Norwich*, in aid of the parish of *St. Benedict*, which was not able to maintain its own poor. Objection, These parishes are not in the same hundred; it is in *Norwich*, where there is no hundred, so the justices have no jurisdiction. And by *Holt* Ch. J. the order must be quashed. *Foley* 31.

As the said justices shall think fit] *E.* 12 *G. K.* and *St. Mary's* in *Marlborough.* An order was made for a neighbouring parish to contribute, *so long as we the said justices shall think fit.* But by the court, It must be quashed; for the discretion that is left in the justices, is as to the *quantum*, and not as to the duration of the contribution. *Str.* 700.

M. 6 *W. K.* and *Knightly.* A sum in gross was taxed upon a neighbouring parish, for a whole year; which was objected to as unreasonable, because their ability may change: nevertheless the order was confirmed. *Comb.* 309.

T. 6 *G. K.* and *Telscombe.* By the court, The order for the contributory parish to make a rate at 6 *d.* in the pound is ill for incertainty: it should have been, to raise such a sum certain. Quashed. *Str.* 314.

T. 12 *G.* 2. Case of the parish of *St. Peter and Paul* in *Marlborough.* Two justices, reciting the inability of the parish of *St. Mary* to maintain its own poor, order the parish of *St. Peter and Paul* to contribute 60 *l.* for the maintenance of the poor of the other parish. And objection being made to their ordering such a gross sum, the court held it in that respect to be well. *Str.* 1114.

County contributory.

2. *And if the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves, as aforesaid, then the justices at their general quarter sessions shall rate and assess as aforesaid, any other of other parishes, or out of any parish within the county.* 43 El. c. 2. f. 3.

T. 3 *G. K.* and *Percivall.* Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred within the same county. It was moved to quash it, and insisted that the statute gives no authority to the sessions to charge people out of the hundred, till two justices have inquired whether any parish in the hundred can contribute: The first application to be to two justices, and the second to

the

the seſſions. *Parker* Ch. J. I do not ſee, to what purpoſe it would be, for the two juſtices to make an order, only to adjudge that no pariſh within the hundred is able to contribute. We will preſume the ſeſſions is ſatisfied of that, and if the two juſtices ſhould make ſuch an adjudication, yet the ſeſſions muſt inquire into the truth of it; and if no order appears, which charges any pariſh within the hundred, it is a ſufficient ground for the ſeſſions to act. If the two juſtices had charged any pariſh within the hundred, that would have ſtopped the ſeſſions from proceeding; and the ſufficiency of the hundred depends on this, whether two juſtices have ever charged the hundred.——*If the ſaid hundred ſhall not be thought by the ſaid juſtices able.*——that is, if the two juſtices do not adjudge it ſo. If two juſtices ſhould adjudge the hundred not able, yet if other two juſtices adjudge the contrary, their charge would be good, and the ſeſſions be ouſted of their juriſdiction, notwithſtanding the firſt adjudication. *Eyre* J. Here are two juriſdictions, that of the two juſtices, and that of the ſeſſions, and both are original juriſdictions. They are different in all reſpects, for the two juſtices have no power out of the hundred, nor the ſeſſions within it. There need be no appeal from an adjudication of two juſtices, for that would be to appeal from a nullity. And the order was confirmed. *Str.* 56.

iii. How far parents and children are liable to maintain each other

Parents and children mutually liable.

1. *The father and grandfather, mother and grandmother, and children of every poor, old, blind, lame, and impotent perſon, or other poor perſon not able to work, being of a ſufficient ability, ſhall at their own charges, relieve and maintain every ſuch poor perſon, in that manner, and according to that rate, as by the juſtices in ſeſſions ſhall be aſſeſſed; on pain of* 20 s. *a month.* 43 El. c. 2. ſ. 7.

Which penalty ſhall go to the uſe of the poor of the ſame pariſh, and be levied by ſome or one of the churchwardens or overſeers, by warrant from two ſuch juſtices (1 Q.) *by diſtreſs; or in default thereof, any two ſuch juſtices may commit the offender to the common gaol, there to remain without bail or mainprize, till the ſaid forfeitures ſhall be paid.* ſ. 2, 11.

Father and mother] *T.* 9 *An. Q.* and *Clentham.* It was moved to quaſh an order upon the father in law, to maintain his wife's daughter, his wife being dead. By the whole court; The huſband ought to provide for the daughter in law during the wife's life, in the right of his wife; but when the wife dies, the relation is diſſolved, and he is not by any means obliged to provide for the daughter in law after her mother's death. *Foley* 39.

E. 10 *An. Q.* and *St. Botolph's Aldgate.* The ſingle queſtion was, Whether the huſband ſhall be chargeable to maintain his wife's children by a former huſband: And it was reſolved, he was, during the wife's life, in her right; but not after. *Foley* 42.

There was an order upon the mother, who was married to a ſecond huſband, to maintain her children which ſhe had by the former huſband: But by the court, a feme covert cannot be charged, but they ought to have charged her huſband. *Foley* 44.

M. 7 *G.* 2. *K.* and *Dempſon.* Order upon the father to maintain the ſon's wife, after a divorce *a menſa & thoro* for adultery, was quaſhed on the authority of *K.* and *Munden* (hereafter following), ſhe not being a natural relation of the father. *Str.* 955.

Grandfather and grandmother] *M.* 7 *C. K.* and *Reeve.* The *reputed* grandfather or grandmother are not within the ſtatute; for a baſtard is *filius populi.* 2 *Bulſtr.* 344.

H. 7 *C. Gerard*'s caſe. The queſtion was, Whether a grandfather is bound to maintain his grandchild in law, having no portion with his grandmother. *Whitlock* and *Croke* Juſtices, both did agree, if he had a portion with the grandmother, he ought to maintain her grandchild during her life; but in this caſe it appeared that the grandfather and grandmother had lived together 19 years, and tho' he had nothing with her, yet now by the wife's induſtry, they were of ability. *Whitlock* thought, that he ought to provide for the grandchild during the grandmother's life; and *Croke* that he ought not. 2 *Bulſtr.* 346.

And children] *T.* 5 *G. K.* and *Munden.* Order, reciting that *Munden* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pratt* Ch. J. The caſes which have hitherto been, were either where the judges were divided, or the matter came not directly in queſtion, or was only a caſe at a judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on conſideration we are all of opinion, that the ſon-in-law is not bound, either within the words or intent of the ſtatute, which provides only for natural parents. By the law of nature, a man was bonnd to take care of his own father and mother. But there being no temporal obligation to inforce that law of nature, it was found neceſſary to eſtabliſh it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this caſe. And the order muſt be quaſhed. *Str.* 190. But it doth not appear from this report, whether the wife was alive or dead.

Of every poor perſon not able to work] *M.* 13 *W. St. Andrews Underſhoft* and *Jacob Mendez de Breta.* The defendant being a Jew, had an only daughter, who was converted from Judaiſm, and embraced Chriſtianity. Whereupon the defendant turned her out of doors, and refuſed to allow her any maintenance. On complaint to the ſeſſions, they reciting that ſhe was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) ſhould allow her 20*s.* a month. But becauſe they did not alledge that ſhe was poor, or likely to become chargeable, the order was quaſhed. 1. *Reyn.* 699.

E. 1 *G. K.* and *Gulley*. It was moved to quaſh an order of ſeſſions. The order ſet out, that one *Mary Gulley* was in a poor deſtitute condition, and that her father was able to maintain her, and therefore they make an order upon him to allow her 2 *s.* 6 *d.* a week, till further order. Objected, It did not appear, that ſhe was lame, blind, or unable to work; ſo that tho' ſhe was in a deſtitute condition, it might be becauſe ſhe would not work: And upon this exception the court quaſhed the order of ſeſſions. *Foley* 47.

Being of a ſufficient ability] *H.* 12 *An. Q.* and *Hallifax*. Order for the father-in-law to pay ſo much a week to his daughter-in-law, was quaſhed, becauſe it was not ſaid that he was of a ſufficient ability. *Caſes of S.* 52.

In that manner as by the juſtices in ſeſſions ſhall be aſſeſſed] *E.* 5 *An. Jenkins*'s caſe. An order of ſeſſions was made, that the defendant ſhould pay 2 *s.* a week towards the ſupport of his father, till that court ſhould order the contrary. Which was held good; becauſe it was *indefinite*, and no ſet time limited: and if an eſtate happened to fall to him, they might apply to the juſtices; otherwiſe if a time was limited. 2 *Salk.* 534.

By the juſtices in ſeſſions] If the child live in the county of *Middleſex*, and be maintained by the pariſh there, and the grandfather lives in the county of *Suffolk*, the juſtices of *Middleſex* can make no order therein, but the juſtices of the county of *Suffolk* muſt make order. 2 *Bulſtr.* 346.

As by the juſtices in ſeſſions ſhall be aſſeſſed] *T.* 9 *An. Q.* and *Jones*. There was an order for the grandmother to take care of her grandchildren, and by the order they ſend the grandchildren to the grandmother. By the whole court, they cannot ſend the grandchildren to the grandmother; but the juſtices ought to have made a rate upon the grandmother of ſo much a week. *Foley* 41.

Parents running away.

2. *Whereas ſometimes men run away, leaving their wives and children, and ſometimes women run away, leaving their children, upon the charge of the pariſh, altho' ſuch perſons have ſome eſtates which ſhould eaſe the pariſh of their charge, in whole or in part; It ſhall be lawful for the churchwardens or overſeers, where any ſuch wife, child, or children ſhall be ſo left, on application to, and by warrant or order of two juſtices, to take and ſeize ſo much of the goods and chattels, and receive ſo much of the annual rents and profits of the lands and tenements of ſuch huſband, father, or mother, as ſuch two juſtices ſhall order and direct, towards the diſcharge of the pariſh or place, where ſuch wife, child, or children are left, for the bringing up and providing for ſuch wife, child, or children; which warrant or order being confirmed at the next quarter ſeſſions, it ſhall be lawful for the juſtices there, to make an order for the churchwardens or overſeers, to diſpoſe of ſuch goods or chattels by ſale or otherwiſe, or ſo much of them, for the purpoſes aforeſaid, as the court ſhall think fit, and to receive the rents and profits, or ſo much of them as ſhall be ordered by the ſaid ſeſſions, of his or her lands and tenements for the purpoſes aforeſaid.* 5 G. c. 8. ſ. 1.

And the ſaid churchwardens and overſeers ſhall be accountable to the juſtices at the quarter ſeſſions for all ſuch money as they ſhall ſo receive. ſ. 2.

And further to compel huſbands and parents to maintain their own families, the law hath alſo provided, that *all perſons running away out of their pariſhes, and leaving their families upon the pariſh, ſhall be deemed and ſuffer as incorrigible rogues.* 7 J. c. 4. ſ. 8.

And if a perſon doth but threaten to run away, and leave his wife or children upon the pariſh; *he ſhall, on conviction before one juſtice, by confeſſion, or oath of one witneſs, be committed to the houſe of correction, for any time not exceeding one month.* 17 G. 2. c. 5.

And by the 7 J. c. 4. *If any man or woman ſhall threaten to run away and leave their families upon the pariſh, and the ſame be proved by two witneſſes on oath before two juſtices of that diviſion; the perſon ſo threatning ſhall be ſent to the houſe of correction (unleſs he can put in ſufficient ſureties for the diſcharge of the pariſh) there to be dealt with as a ſturdy and wandring rogue, and to be delivered at the ſeſſions, and not otherwiſe.* ſ. 8.

For the further maintenance of the poor, there are many fines and forfeitures payable to their uſe; as, for ſwearing, drunkenneſs, deſtroying the game, and in many other inſtances, which are to be found under their proper titles.

Form of a poor rate.

AN *aſſeſſment for the neceſſary relief of the poor, and for the other purpoſes in the ſeveral acts of parliament mentioned relating to the poor, for the pariſh of* ——— *in the county of* ——— *made and aſſeſſed the* ——— *day of* ——— *being the firſt rate at* 6 d. *in the pound for the preſent year* ———

			l.	*s.*	*d.*
A. B.	———	———	——— 0	3	0
C. D.	———	———	——— 0	0	9
E. F.	———	———	——— 0	2	6

And ſo forth.

Aſſeſſors, A. B. } Church-
C. D. } wardens.
E. F. } Overſeers of
G. H. } the poor.

Allowance of the rate.

WE *two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* quorum, *do conſent unto and allow of this aſſeſſment: Witneſs our hands the* ——— *day of* ———

J. P.
K. P.

Warrant

Warrant of diſtreſs for a poor rate.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of ——— in the ſaid county of ———

WHEREAS *in and by a rate and aſſeſſment made, aſſeſſed, allowed, and publiſhed, according to the ſtatutes in that caſe made and provided,* A. O. *an inhabitant and occupier of an houſe in the ſaid pariſh of* ——— *was duly rated and aſſeſſed for and towards the neceſſary relief of the poor of the ſaid pariſh for this preſent year the ſum of* 3 s. *And whereas it duly appeareth unto us, two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* quorum, *as well upon the oath of* O. P. *overſeer of the poor of the ſaid pariſh, as otherwiſe, that the ſaid ſum of* 3 s. *hath been lawfully demanded of the ſaid* A. O. *and that the ſaid* A. O. *hath refuſed and doth refuſe to pay the ſame: Theſe are therefore to require you forthwith to make diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* [*four*] *days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you detain the ſaid ſum of* ——— *and alſo your reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs; rendring to him the ſaid* A. O. *the overplus on demand. And if no ſuch diſtreſs can be made, that then you certify the ſame unto us, to the end that ſuch further proceedings may be had therein, as to law doth appertain. Given under our hands and ſeals this* ——— *day of* ———

V. Of the relief and ordering of the poor.

Poor to be maintained within their own pariſhes.

1. By the ſtatute of the 43 *El. c.* 2. the ſeveral pariſhes were required to maintain and employ their own poor, under the direction of two juſtices; in conſequence whereof, before the ſtatute of *C.* 2. the juſtices were wont to ſend the poor to their own pariſhes to be relieved and ordered: and there is no power given by either of thoſe ſtatutes, nor by any other (except in the caſe of certificate perſons, and in the caſe of contracting as is herein after mentioned) to the churchwardens or overſeers to relieve any perſons out of their own pariſh, much leſs any obligation upon them to exerciſe that part of their office out of their own juriſdiction.

And in the caſe of *Clypton* and *Raviſtock*, *E.* 11 *An.* it was adjudged as follows: There was an order reciting, Whereas *John Sandrſon* and his wife are laſt ſettled in *Clypton*; theſe are to order you the churchwardens of *Clypton*, to repair to the pariſh of *Raviſtock*, and to relieve them, being ſo ſick that they cannot be removed. By the court; The juſtices have no authority to ſend for officers out of another pariſh, but the pariſh where the poor

poor reſide are bound to maintain them as long as they continue with them. And by *Powell* J. altho' they be not pariſhioners, yet they are to be relieved till they are carried to their own pariſh. *Caſ. of S.* 49.

Order to be taken therein.

2. By the 43 *El. c.* 2. *The churchwardens and overſeers, with the conſent of two juſtices* (1 Q.) *ſhall take order from time to time, for ſetting to work the children of all ſuch whoſe parents ſhall not by the ſaid churchwardens and overſeers, or the greater part of them, be thought able to keep and maintain their children; and for ſetting to work all ſuch perſons, married or unmarried, having no means to maintain them, and uſing no ordinary and daily trade; and for the neceſſary relief of the lame, impotent, old, blind, and ſuch other among them being poor, and not able to work.* ſ. 1.

And the ſaid juſtices, or one of them, ſhall ſend to the houſe of correction, or common gaol, ſuch as ſhall not employ themſelves to work, being appointed thereunto as aforeſaid. ſ. 4.

Poor, and not able to work] *M.* 3 *G. K.* and the inhabitants of *Highworth.* There was an order to pay 3*s.* weekly to a poor perſon, by the pariſh of *Highworth,* ſo long as he ſhall continue poor. It was objected, that by the ſtatute it ought to appear that they are poor and impotent. *Parker* Ch. J. I favour theſe orders as much as I can, becauſe no body takes care to draw them up for the poor. But it muſt be quaſhed. *Str.* 10.

On the authority of this caſe, *E.* 3 *G. K.* and *Stokegurſey,* an order was quaſhed for the ſame fault. So, *E.* 4 *G. K.* and *Tipper,* an order to maintain a daughter-in law. *id.*

Setting up trades.

3. By the 3 *C. c.* 4. *The churchwardens and overſeers may, by the conſent of two juſtices* (1 Q.) *within their reſpective limits, wherein ſhall be more juſtices than one; and where no more ſhall be than one, with the aſſent of that one juſtice, ſet up and uſe any trade, miſtery, or occupation, only for the ſetting on work, and better relief of the poor.* ſ. 22.

Erecting cottages.

4. *The churchwardens and overſeers, or the greater part of them, by the leave of the lord of the manor, whereof any waſte or common within their pariſh is parcel, and on agreement with him made in writing, under his hand ſeal; or otherwiſe, according to any order to be ſet down by the juſtices in ſeſſions, by like leave and agreement of the lord in writing under his hand and ſeal, may build in fit and convenient places of habitation in ſuch waſte or common, at the charge of the pariſh, or otherwiſe of the hundred or county as aforeſaid, to be rated and gathered in manner before expreſſed, convenient houſes of dwelling for the ſaid impotent poor; and may place inmates, or more families than one, in one cottage or houſe, notwithſtanding the ſtatute of the* 31 El. *Which cottages, or places for inmates, ſhall not be employed for any other habitation, but only for impotent and poor of the ſame pariſh placed there by the churchwardens and overſeers.* 43 El. c. 2. ſ. 5.

Overſeers may contract for the maintenance and employment of the poor.

5. *It ſhall be lawful for the churchwardens and overſeers, in any pariſh, townſhip, or place, with the conſent of the major part of the pariſhioners or inhabitants, in veſtry, or other pariſh or public meeting for that purpoſe aſſembled, or of ſo many of them as*

ſhall

shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses, in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection, and there to keep, maintain, and employ all such poor persons, and take the benefit of the work, labour, and service of any such poor persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor persons, who shall be there kept or maintained. And if any poor person shall refuse to be lodged, kept, or maintained in such house or houses, he shall be put out of the parish book, and shall not be intitled to receive relief from the churchwardens and overseers. 9 G. c. 7. s. 4.

Two or more places may join.

6. *And where any parish or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, townships, or places, with the consent of the major part of the parishioners or inhabitants of their respective parishes, townships, or places, in vestry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice of the peace dwelling in or near any such parish, township, or place, signified under his hand and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes, townships, or places so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained and employed. And if any poor person in the respective parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the house hired or taken for such uniting parishes, townships, or places, he shall be put out of the collection book, and not intitled to ask relief.* 9 G. c. 7. s. 4.

The overseers of one place may contract with those of another, without joining.

7. *And it shall be lawful for the churchwardens and overseers of any parish, township, or place, with the consent of the major part of the parishioners or inhabitants of the said parish, township, or place, where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, township or place, for the lodging, maintaining, or employing of any poor person or persons of such other parish, township, or place, as to them shall seem meet. And if any poor person of such other parish, township, or place, shall refuse to be lodged, maintained, and employed in such house or houses, he shall be put out of the collection book, and not be intitled to have relief.* 9 G. c. 7. s. 4.

Order of maintenance by the justices.

8. *No person shall be allowed to have or receive collection at the charge of the parish, but by authority under the hand of one justice residing within such parish, or (if none be there dwelling) in the parts*

parts near or next adjoining, or by order of the justices in sessions, except in cases of pestilential diseases, plague, or small pox, for such families only as shall be therewith infected. 3 W. c. 11. s. 11.

And no justice shall order relief to any poor person, until oath be made before him of some matter, which he shall judge to be a reasonable cause for having such relief; and that the same person had by himself, or some other, applied for relief to the parishioners at some vestry or other publick meeting, or to two of the overseers, and was by them refused to be relieved; and until such justice hath summoned two of the overseers to shew cause why such relief should not be given, and the person so summoned hath been heard or made default to appear. 9 An. c. 7. s. 1.

Persons relieved to be entred in a book.

9. *And there shall be provided and kept in every parish, a book wherein the names of all persons who receive collection shall be registred, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity: and yearly in* Easter *week, or as often as shall be thought convenient, the parishioners shall meet in the vestry or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entred.* 3 W. c. 11. s. 11.

And no officer shall (except upon sudden and emergent occasions) bring to the account of the parish, any money he shall give to any poor person who is not registred in such book, as a person intitled to receive collection; on pain of 5 l. *by distress, by warrant of two justices, who shall have examined into and found him guilty of such offence; which said sum shall be applied to the use of the poor by direction of the justices.* 9 G. c. 7. s. 2.

And badged.

10. Moreover, *Every such person as shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house (such child only excepted, as shall be by the churchwardens and overseers permitted to live at home, in order to attend an impotent and helpless parent) shall upon the shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large* Roman P, *together with the first letter of the name of the parish or place, whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: And if any such poor person shall neglect or refuse to wear such badge or mark, it shall be lawful for one justice to punish such offender, either by ordering his allowance to be abridged, suspended, or withdrawn, or otherwise by committing him to the house of correction, to be whipt and kept to hard labour, not exceeding* 21 *days; And if any churchwarden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he shall forfeit* 20s. *by distress, half to the informer and half to the poor.* 8 & 9 W. c. 30. s. 2.

Spirituous liquors not to be used in workhouses.

11. By the 24 *G.* 2. *c.* 40. *No spirituous liquors shall be sold or used in any workhouse, or house of entertainment for parish poor;* as is set forth more at large, in the article relating to spirituous liquors, under the title Excise.

One

One obſervation I ſhall here ſubjoin, in relation to the ſtatute of the 9 *G. c.* 7. abovementioned, with regard to the contracting for the lodging, maintaining, and employing the poor together in one houſe; which is this, That as the beſt judgment of the uſefulneſs of any law muſt be drawn from experience, we may pronounce this act to be very beneficial, becauſe it hath been put in practice in many pariſhes and places with good effect; and I have from many years obſervation never known it to fail of reducing the rates in a few years very conſiderably, and in ſome places near one half. Upon which fact this conſequence ariſeth, that generally the poor are better regulated in large than in ſmall communities. And this ſuggeſts one bad effect of the clauſe in the ſtatute of the 13 & 14 *C.* 2. which ſubdivides the pariſhes into townſhips; whereby the ſeveral little villages in a pariſh, inſtead of being intent upon the employing and maintaining their poor, are often ſet by the ears together about ſettlements, when perhaps there is no diſpute at all but that the ſettlement is in the pariſh at large. Indeed where the pariſh is very extenſive, it may be convenient, or neceſſary, to ſubdivide. But, generally, it ſeemeth, that this practice hath been extended much too far. For the remedy whereof, it might be of uſe, to give the juſtices a power, and to require them, to lay together ſo many townſhips or pariſhes as ſhall be thought expedient, containing in the whole not leſs than ſuch a number of families, or not leſs than ſuch a yearly value of the eſtates. The benefits whereof would be theſe: 1. Suppoſe ten ſmall townwips are laid together, juſt nine parts in ten of the ſquabbles about ſettlements will be prevented. 2. Nine parts in ten, or if the poor are maintained in ſeparate families as is frequently done, at leaſt ninety nine houſe rents in a hundred, will be ſaved. 3. Abundance of cottages will be deſolated, which now harbour nothing but beggars and thieves. 4. Leſs common will be deſtroyed, and wood conſumed, for fuel. And, 5. The poor will be better ordered. Obſervation.

Oath of a poor perſon wanting maintenance.

A. P. *of* ——— *in the pariſh of* ——— *in the county of* ——— *maketh oath, that he is very poor and impotent, and not able to provide for himſelf and his family, and that his lawful ſettlement is in the ſaid pariſh of* ——— *and that on* ——— *laſt he did apply for relief to the pariſhioners of the ſaid pariſh at a veſtry* (or other publick) *meeting* [or, to two of the overſeers of the poor of the ſaid pariſh] *and was by them refuſed to be relieved.*

Taken and made before me one of his majeſty's juſtices of the peace for the ſaid county, the ——— *day of* ———

A. P.

J. P.

Warrant thereupon to summon the overseers.

Westmorland. { To the constables of ——— in the parish of ——— in the said county, and to every of them.

WHEREAS A. P. *of your parish hath this day made oath before me* ——— *one of his majesty's justices of the peace in and for the said county, that he the said* A. P. *is very poor and impotent, and not able to provide for himself and his family; and that he the said* A. P. *did on* ——— *last apply to the parishioners of your said parish at a vestry* (or other publick) *meeting* [or, *to* A. B. *and* C. D. *two of the overseers of the poor of the said parish*] *and was by them refused to be relieved: These are therefore to require you in his said majesty's name, to summon two of the overseers of the poor of the said parish, to appear before me on* ——— *next at the house of* ——— *in* ——— *in the said county, at the hour of* ——— *in the forenoon of the same day, to shew cause why relief should not be given to the said* A. P. *And be you then there with this precept, to certify what you shall have done in the execution hereof. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year* ———.

Order for maintenance.

Westmorland. WHEREAS A. P. *of* ——— *in the parish of* ——— *in the said county of* ——— *yeoman, hath made oath before me* ——— *one of his majesty's justices of the peace for the said county, that he the said* A. P. *is very poor and impotent, and not able to work; and that he the said* A. P. *did on* ——— *last apply for relief to the parishioners of the said parish of* ——— *at a vestry* (or, *publick*) *meeting* [or, *to* A. B. *and* C. D. *two of the overseers of the poor of the said parish*] *and was by them refused to be relieved; And whereas* A. B. *and* C. D. *overseers of the poor of the said parish, have been duly summoned by me, to shew cause why relief should not be given to the said* A. P. *and have appeared before me in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid* [or, *but have made default to appear before me according to such summons*]: *I do therefore hereby order the churchwardens and overseers of the poor of the said parish, or some of them, to pay unto the said* A. P. *the sum of* ——— *weekly and every week, for and towards his support and maintenance, until such time as they shall be otherwise ordered according to law to forbear the said allowance. Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year* ———.

Contract

Contract for maintenance.

AT *a publick meeting of the inhabitants of the parish of* ——— *in the county of* ——— *for that purpose assembled, upon usual notice thereof first given; it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overseers of the poor of the said parish, of the one part, and* A. M. *of* ——— *in the said parish, yeoman, of the other part; That he the said* A. M. *shall and will during the space of one whole year to commence from* ——— *next ensuing, at his own proper cost and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people as shall be lawfully intitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens or overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, cloathing, employment, and other things necessary for their keeping and maintenance; And that in consideration thereof, the said churchwardens and overseers of the poor, and their successors respectively, shall pay or cause to be paid to the said* A. M. *the sum of* ——— *in equal proportions* ——— *The said* A. M. *to have moreover and take unto himself the benefit of the said poor peoples work, labour, and service during the said term. In witness whereof the parties to these presents have hereunto set their hands, the* ——— *day of* ———.

It may perhaps be requisite to insert a clause more particularly with respect to the article of *cloathing*; setting forth in what condition they shall go, and in what condition be delivered back again.

As also, if they shall *die*; who shall be at the expence of burying them, and what shall become of their cloaths and other small effects.

As also, if they shall be *refractory* or ungovernable; who shall be at the charge of sending them to the house of correction, or otherwise reducing them to good behaviour.

And other clauses as there may be occasion.

If two parishes or townships shall join in such contracting, it will be necessary to insert in the contract, the consent of a justice of the peace; as thus,

- - - - - *by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of* J. P. *esquire, one of his majesty's justices of the peace for the said county, dwelling in the said parish of* ——— [or, *near to the said parishes, or townships of*] - - - - -

And the assent of the said justice may be indorsed thereon, as follows;

I ——— *esquire, one of his majesty's justices of the peace for the within mentioned county of* ——— *and dwelling in the within mentioned*

tioned parish of ——— [or, *near to the within mentioned parishes, or townships of* ———] *do consent unto, allow, and approve of the within written contract. Given under my hand and seal the* —— *day of* ———.

VI. Of the overseers account.

Account.

1. By the 43 *El. c.* 2. *The churchwardens and overseers shall, within four days after the end of their year, and other overseers nominated, make and yield up to two justices* (1 Q.) *a true and perfect account of all sums by them received, or rated and assessed and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office: And such sums of money as shall be in their hands, shall pay and deliver over to their successors: And the subsequent churchwardens or overseers, by warrant from two such justices, may levy by distress and sale of the offender's goods, the said sums or stock which shall be behind on any account to be made; and in defect of such distress, two such justices may commit him to the common gaol, there to remain without bail or mainprise, until payment of the said sum and stock: And also any such two justices may commit to the said prison, every one of the said churchwardens and overseers, which shall refuse to account, there to remain without bail or mainprise, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands.* s. 2, 4.

And by the 17 G. 2. *c.* 38. it is enacted as follows: *The churchwardens and overseers shall yearly, within fourteen days after other overseers shall be appointed, deliver in to the succeeding overseers a just account in writing, fairly entred in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received; and also of all materials that shall be in their hands, or in the hands of any of the poor to be wrought, and of all money paid by such churchwardens and overseers so accounting, and of all other things concerning their office; and shall also pay and deliver over all sums of money and other things, which shall be in their hands, to the succeeding overseers; which account shall be verified by oath before one justice, who shall sign and attest the taking of the same, at the foot of the account, without fee; and the said books shall be preserved by the churchwardens and overseers, in some publick or other place within the parish or township; and they shall permit any person assessed, or liable to be assessed, to inspect the same at all seasonable times, paying* 6 d. *for such inspection; and shall upon demand give copies at the rate of* 6 d. *for every* 300 *words, and so in proportion. And if they shall refuse or neglect to make and yield up such account verified as aforesaid within such time, or shall refuse or neglect to pay over the money and other things in their hands; any two justices may commit them to the common gaol, till they shall have given such account, or shall have paid and yielded up such money and other things in their hands as aforesaid.* s. 1, 2.

Churchwardens] *M.* 15 *C.* 2. *K.* and *Pecke.* The churchwarden was committed for refusing to account, for all monies received and disbursed by him, and of all such things as concern his office. But upon an *habeas corpus* he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, altho' to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden. 1 *Keb.* 574.

Such money as shall be in their hands, shall pay and deliver over to their successors] *M.* 8 *G.* 2. *K.* and the justices of *Somersetshire. Mandamus* to the justices, to grant a warrant for levying 30*l.* 17*s.* 11*d.* being the balance of the last overseers account in their hands. They return, that true it is there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that one *Young* was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay *Young*; and for that cause they had refused to grant the warrant. But by the court, There must go a peremptory *mandamus*; for the statute says, the balance shall be paid over to the new overseers, under a penalty; and it is not in the power of the vestry, to dispense with the statute. *Str.* 992.

Until he have made a true account] *T.* 2 *W. The mayor* and *churchwardens of Northampton.* The mayor committed the churchwardens, as overseers of the poor, for refusing to account, and the warrant of commitment concluded, *until they be duly discharged according to law.* The court held the commitment void; because the warrant ought to conclude, *there to remain until they shall account*, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy; for in the first case, the commitment must be, until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case, he shall not lie till a sessions, but shall be discharged upon performance of his duty. *Carth.* 153.

Overseer removing or dying.

2. *And if any overseer shall remove, he shall before his removal, deliver over, to some churchwarden or other overseer, his accounts verified as aforesaid, with all assessments, books, papers, money, and other things concerning his office; and if any overseer shall die, his executors or administrators shall within* 40 *days after his decease, deliver over all things concerning his office to some churchwarden or other overseer, and shall pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid.* 17 G. 2. c. 38 s. 3.

Appeal against the account.

3. By the 43 *El. c.* 2. *If any person shall find himself aggrieved by any act done by the said overseers or justices; he may appeal to the general quarter sessions, whose order therein shall bind all parties.* s. 6.

And this power of appealing generally, doth not seem to be taken away by the statute here next following; but the same being only in the affirmative, it seemeth that they may both stand together, and that the appeal may be upon either of the statutes.

And upon this ſtatute of the 43 *El.* the appeal is not limited to the *next* ſeſſions, but may be at any time after.

The other ſtatute abovementioned, with regard to this matter, is as follows: *If any perſon ſhall have any material objection to ſuch account or any part thereof, he may, giving reaſonable notice, appeal to the next ſeſſions; but if reaſonable notice be not given, then they ſhall adjourn the appeal to the next ſeſſions after; and the court may award coſts to either party, as in caſes of ſettlements by the* 8 & 9 W. 17 G. 2. c. 38. ſ. 4.

So that here is power to award coſts, if the appeal is to the next ſeſſions; but if the appeal is upon the 43 *El.* and not to the next ſeſſions, there is no power in ſuch caſe to award coſts.

And by the ſaid ſtatute of the 17 *G.* 2. *c.* 38. *In all corporations or franchiſes, which have not four juſtices, perſons aggrieved may appeal, if they think fit, to the next county ſeſſions.* ſ. 5.

M. 4 *An. Q.* and *Hedges.* On appeal upon the ſtatute of the 43 *El.* againſt the allowance of the account by two juſtices, the ſeſſions ordered the overſeer to pay ſo much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the court; They ſhould have levied the arrears by diſtreſs and ſale, and in default of diſtreſs have committed him; for the ſeſſions muſt execute their judgment, in the ſame manner as the two juſtices muſt do. 2 *Salk.* 533.

T. 7 *G. K.* and *Bartlett.* An order made at the ſeſſions relating to accounts of overſeers, was moved to be quaſhed, becauſe it did not appear that the accounts had been before the juſtices out of ſeſſions, and they cannot come *per ſaltum* to the ſeſſions. On the other ſide it was ſaid, that it appeared there was an allowance, for the appeal is ſaid to be againſt the diſburſements *and the allowance thereof*, which the court will preſume was regular. But by the court, It doth not follow, that this was an allowance by two juſtices, for the pariſh might do it; and therefore for want of juriſdiction this order muſt be quaſhed. *Str.* 983.

Allowance of the account.

Weſtmorland. PERUSED *and allowed (having been firſt ſigned and verified on oath by* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overſeers of the poor) By me one of his maj ſty's juſtices of the peace in and for the ſaid county, the ——— day of ———.*

J. P.

VII. Penalty of overſeers for the neglect of their duty.

1. In general, *Overſeers being negligent in their office, ſhall forfeit for every default* 20 s. *to the poor, to be levied by ſome or one of the churchwardens or overſeers, by warrant of* 2 *juſtices* (1 Q.) *by diſtreſs; or in defect thereof, any two ſuch juſtices may commit the offender to the common gaol, there to remain without bail*

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